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**From New Localism to Active  
Localism: a case study of local  
government's use of the Power of  
Well-Being.**

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PhD**

**2011**

**From New Localism to Active  
Localism: a case study of local  
government's use of the Power of  
Well-Being.**

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## **Abstract:**

Post 1997, the New Labour administration wanted to foster innovation in local government to reduce bureaucracy and modernise the public sector - part of the Local Government Modernisation Agenda (LGMA). One keystone of that agenda was to introduce a power of first resort for local government (DCLG, 2008). Authorities could regard this power as a license to offer creative and innovative solutions to local problems, to engage in any function that did not break the law. New Labour's new discretionary power was called the Power of Well-Being. Despite central government's aspiration, evidence shows that less than a fifth of local authorities have used the Power of Well-Being. This thesis provides a comparative investigation across four local authorities into their use of the Power of Well-Being. The aim of this research is to assess the impact of the Power of Well-Being on local authorities' autonomy, their attitudes towards discretionary power and local authority officers' attitudes towards risk. From the four case study authorities, it was clear that the attitude of senior officers - and the culture of an organisation - was the greatest determinant of whether to engage the Power of Well-Being. The research found that the role of legal officers and the attitude of senior officers or members is crucial in the successful engagement of discretionary legal power. In local authority's that are devoid of cultural ambition within the organisation, risk averse legal officers acted as 'gatekeepers' to block usage of the Power of Well-Being. Where an organisational culture of ambition does not exist, the withdrawal of discretionary funding tends to limit the level of engagement in discretionary activity. However, where stability occurs there is a greater likelihood of discretionary activity. The implication of this research on a future discretionary power, and local government's autonomy, is that the most significant hindrance to the success of a discretionary power would be officers' and members' attitudes. The Power of Well-Being technically enabled authorities to break from tradition to engage beyond their traditional boundaries; in practise, this was not the case. Successful engagement in discretionary activity would require officers and members to be fully aware of the practicalities of use of a discretionary power.

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## **Declaration**

I declare that the work contained in this thesis has not been submitted for any other award and that it is all my own work. I also confirm that this work fully acknowledges opinions, ideas and contributions from the work of others.

Any ethical clearance for the research presented in this thesis has been approved. Approval has been sought and granted by the School Ethics Committee on 21<sup>st</sup> January 2009.

William John Holloway

Signature: William Holloway

Date: 7<sup>th</sup> October



## Chapter 1 – Introduction: The Power of Well-Being and Local Government Autonomy in Contemporary Britain

“I recall serving on a national executive sub-committee in the 1980s and discussing what a new Labour Government would do for local democracy - we were doing that because the huge rows about rate capping and the abolition of the county councils had taken place. My right honourable friend the Member for Blackburn (Mr. Straw) was on the same working party. Many of us thought then that a general competence power should be given to local authorities - I still think that - but he came up with this stunning argument: if there were such a power, what would there be to prevent Islington from making an atom bomb? I do not know why he chose to use Islington in that absurd example, but if seriously intelligent and respected people such as he come out with absurd arguments such as that, there really is no argument against giving a general competence power to local authorities. Unless local authorities have the ability to do things unless they are specifically prohibited from doing them, the converse of that will occur and there will be regular interference in very important local matters - beyond those relating to public conveniences - that are better determined locally.”

Graham Stringer MP

HC Deb 13 October 2009 c202-203

This thesis explores the range of factors which have encouraged or inhibited Local Authorities usage of the Power of Well-Being (PoWB), as contained in the Local Government Act 2000, and assesses how activities in this area inform our understanding of the emergence of a more *active* form of localism. The aim of the PoWB was to “replace the presumption of *ultra vires* with a new power for well-being which allows councils to undertake any activity that promotes the well-being of their area, except where they are specifically restricted from doing so” (HoC, 2002).

“The Government wanted to create self-confident councils, acting as community leaders - changing the role of councillors to become advocates of their constituents rather than the defenders of current practice and sometimes poor service provision. In particular Part I of 2000 Act introduced a new power to promote social, economic and environmental well-being. This was explicitly intended to strengthen councils' responsibility for, and ability to respond to, the distinctive needs of their communities.”

(HoC, 2002)

The thesis aims to provide one of the first academic investigations into the use of the PoWB, capturing both the attitudes towards the PoWB in local authorities, and assessing the efforts made by local government to promote the well-being of local residents. It will also explore local authorities' attitude towards wider discretionary power and the perception of senior local officers of the nature of local autonomy. This aim will be accomplished by meeting the following objectives:

- To critically analyse the existing literature on central-local relations, and establish the contemporary focus on 'New Localism' after 1997.
- To explore how the concept of local government autonomy can provide a coherent approach to our understanding of the use of the PoWB.
- To develop an understanding on the usage of the PoWB by collecting original data from local and national perspectives.
- To analyse the future of the wider local well-being agenda given the change in Central Government, and with regard to the impact of likely cuts in public expenditure.
- To develop a contemporary typology of British local government to help distinguish between different attitudes towards discretionary activity.

This chapter will provide an overview of the origins underpinning this research, the philosophical context of the topic, discussion of the principal issues involved, outline an expected hypothesis and summarize the local – and national – context of the research. This chapter will end with a guide to the structure of the thesis.

### Origin of the research

Since the electoral landslide, and election of New Labour, in 1997, a range of legislation has been passed to modernise local government; this was part of the Local Government Modernisation Agenda (LGMA). The main purposes of the LGMA was to promote democratic accountability amongst local authority elected members, reduce bureaucracy and devolve authority to local government (Midwinter, 2001; Copus, 2007; Wilson and Game, 2006; Sullivan, 2006, 2007; Mason and McMahon, 2008). In 2000, the New Labour government passed the Local Government Act which created a duty for local

authorities to develop a strategy to promote the well-being of the local people, the area and those other people resident in the area (Great Britain. Local Government Act 2000:sc.4). It also created a new discretionary power for local authorities, the PoWB – (Great Britain. Local Government Act 2000: sc.2). With its origins in the 1997 New Labour General Election manifesto, the PoWB was meant to represent an enabling power for local government. That is to say, the PoWB would enable local authorities to intervene in non-traditional areas and conduct extra-statutory activity. In 2002, oral evidence from the Society of Local Authority Chief Executives to the Department for the Environment, Transport and the Regions Select Committee reflected on the limited adoption of the PoWB highlighting:

"These powers were welcomed by local authorities but we are concerned that Part I of the Act may have lost its way both in the short term and in the longer term. It needs to be re-launched in a more meaningful way ... We have heard little since its launch as to how - or even if - it is being used. Although its introduction was accompanied by guidance notes of various kinds, for many legal advisors in local government that launch was a false dawn. At some point its ambiguous form together with experience of its use by practitioners needs to be reviewed. Doing so would then allow for a re-launch. Without such a re-launch, we suspect it will start to gather dust on the shelves of cautious local government lawyers. It is felt that a more rigorous approach to co-ordinate the use of these powers needs to be taken."

(HoC, 2002)

Midwinter (2001) highlights the PoWB as a 'milestone' in the LGMA. It enshrined local government's community leadership role in legislation (DCLG, 2008b), and was one element of a legislative agenda designed to realise 'New Localism'. New Localism could be characterised as a method of decentralising power away from central government and towards local government – within a framework of agreed minimum standards (Stoker, 2004). However, the mix between rhetoric and reality – between new localism and genuine local autonomy – remains obscure. Stoker reflects that New Localism embodies:

"a practical response to a significant practical challenge: how to manage a substantial variety of state service provision and interventions in a world that defies the application of simple rule-driven solutions and often

requires an effective response from the recipient of the service or intervention in order for the state action to work.”

(Stoker, 2004: p.118)

Importantly, Stoker highlights the distinction on the emphasis on New Localism was not “a romantic return to community decision making or rampant beggar thy neighbour localism” (Stoker, 2004: p.118). The PoWB represents one element of the LGMA, as part of a wider review to create a more balanced system of multi-level governance (Jessop, 2004; Stoker, 2000, 2004). The PoWB clause grants local government the discretionary legal authority “to have power to do anything which they consider is likely to achieve any one or more of the following objects –

- a) The promotion or improvement of the economic well-being of their area,
- b) The promotion or improvement of the social well-being of their area, and
- c) The promotion or improvement of the environmental well-being of their area.”

(Great Britain. Local Government Act 2000: sc.2:1)

The PoWB also allows local authorities to act for the benefit of the whole or part of the local area, or all or any persons resident or present in the local authority area (Great Britain. Local Government Act 2000: sc.2:2). Stoker highlights that “there are differences of emphasis amongst government ministers about how to take forward the New Localist agenda” (Stoker, 2004: p. 117). A similar distinction could be applied to local authority officers and members regarding interpretation of the PoWB; however a much broader question is whether local government officers and elected members accepted the role of the PoWB as a power of first resort.

Whilst the intention was that the PoWB would represent an enabling power, the New Labour Government argued that the PoWB offered a power of first resort to local government. That is to say, local authorities need look no further than the PoWB when looking for legal authority for a specific function or project. However, the PoWB did not change the existing legal arrangement. Although academics have acknowledged that the PoWB did ‘ease the legal shackles’

restricting local government discretionary action (Wilson and Game, 2006; Braybrook, 2008; Eaton, 2009), local government remains constrained by the ultra vires principle. The ultra vires principle states that, unlike individuals, local government can only carry out those functions that statute explicitly permits. Whereas an individual can do anything unless the law states otherwise, local government can only engage in projects or functions that the law explicitly says it can. The PoWB did not change the ultra vires principle; it did not represent a Power of General Competence (PoGC). Moreover, as it did not present a PoGC, there are significant limitations on the PoWB. It does not allow local authorities to:

- Raise capital or revenue, or incur debt to finance the use of the PoWB,
- Use the PoWB without taking direct account of the Sustainable Community Strategy<sup>1</sup> for the local authority area,
- Use the PoWB without the local authority considering how its use would contribute to the economic, social or environmental objectives of the Sustainable Community Strategy, and may need to demonstrate how its use would do so,
- Use the PoWB without taking into account the statutory guidance from Department of Communities and Local Government (DCLG),
- Override existing secondary legislation that placed requirements, restrictions, prohibitions or limitations on local authority activity.

(LGA, 2008: p.3)

Furthermore, as half of all statutory duties imposed on local government since the 1840s have been introduced since 1997 (Pickles, 2011), the conceptual basis of the LGMA could be questioned. When the Audit Commission introduced the Comprehensive Performance Assessment, in 2002, to assess the performance of local authorities in response to rising public expectations, central government developed further (and more sophisticated) controls.

“Under the Comprehensive Performance Assessment that each local authority is now subjected to, the centre not only defines the outcomes

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<sup>1</sup> A Sustainable Community Strategy (SCS) sets out the long term vision for the area. It is drawn-up in response to local needs. As the ‘plan of plans’ (ODPM, 2003), an SCS includes and builds upon the Regional Economic Strategy, Regional Housing Strategy, Strategy for Neighbourhood Renewal and previous White Papers. An SCS is “an action plan to build successful, thriving and inclusive communities” (ODPM, 2003: p.3). It is drawn up by the Local Strategic Partnership and implemented through the Local Area Agreement. The outcomes and targets are designed to achieve the vision for the area set out in the SCS. However, an SCS is not subject to external validation, checks or controls but is subject to a sustainability examination.

required in particular policy areas but also what constitutes good practice in a host of managerial contexts”

(Pratchett, 2004: p.371)

Pratchett highlights that this emphasis on performance metrics presented a significant challenge to New Labour’s vision of New Localism stating:

“local autonomy requires an acceptance of difference between areas in both democratic processes and political outcomes. This challenge is significant for the ‘new localism’ vision”

(Pratchett, 2004: p.372)

The New Labour Government recognised the inherent challenge posed to New Localism. Initial research into local authorities’ use of the PoWB found that a low level of usage was a direct consequence of low awareness of the PoWB (INLOGOV & UWE, 2008; DCLG, 2008b). A more contemporary account of use of the PoWB by local authorities indicates that only 15% of authorities have utilised the PoWB (Williams, 2010). However, beyond this initial research there has been little further academic investigation of the use of the PoWB. This thesis will aim to fill that gap in knowledge by identifying the common factors that act to inhibit or promote councils’ use of the PoWB, and explore the role of officers and elected members in the decision to utilise the PoWB. The findings will be utilised to produce a contemporary typology of local government’s discretionary activity that will inform our understanding of local authority discretionary activity.

As the PoWB was intended to act as enabling power, and one element within an agenda to enable New Localism, the findings from this research will contribute to understanding a theoretical framework for local autonomy. This framework will then – with the research findings – provide insight into policy implications for the future of local autonomy, and the future use of discretionary legal power in the form of a power of general competence – a key feature of the Coalition Government’s localist agenda (Cabinet Office, 2010). Pratchett surmises that “autonomy is about liberty, whether of the individual person or the individual organisation” (Pratchett, 2004: p.372). Although Pratchett was

concluding on the tensions between local autonomy and local democracy, the 'freedom from / freedom to' distinction is relevant to a theoretical framework for conceptualising modes of autonomy.

Using Pratchett's (2004) 'freedom from / freedom to' distinction, tensions with New Localism can be highlighted. Whilst the PoWB may have increased local authorities' 'freedom to' carry out functions that were traditionally regarded as ultra vires, the various restrictions and limitations decreased local government's 'freedom from' central government. Importantly, the parallel that Pratchett highlights regarding the distinction between personal versus organisational liberty is particularly relevant – given the nature of local government's discretionary legal power and the ultra vires principle. Pratchett (2004) indirectly alludes to the rationale behind the decision not to release local government from the current systemic restraints (and giving local authorities a power of general competence) by increasing authorities 'freedom to' – instead offering the PoWB.

Pratchett highlights that "local autonomy ... can be in conflict with the institutions of national democracy" and that "too much local autonomy ... can destabilise the national institutions (Pratchett, 2004: p.373). Concluding that "the new localism may have managed to clarify some of the complexities that bedevil central - local relations, its capacity to resolve this dilemma seems limited" (Pratchett, 2004: p.373). This research will incorporate Pratchett's (2004) distinction, further develop a framework for local autonomy and assess the role of the PoWB in the realisation of New Localism. Furthermore, this thesis will consider New Localism as a method to achieve genuine autonomy for local government and whether further measures are required to actively promote localism and the future of the local well-being agenda.

### *Understanding well-being*

One of the central philosophical issues at the heart of this research refers to the questions: what is well-being? and can it be promoted by local government? At

present, the study of the politics of well-being is an emergent research area. Most of the recent academic research has concluded that further enquiry is required before a definitive conclusion on those factors that contribute to well-being can be reached. The literature currently available has little information provided on the role of local government in the promotion of well-being, beyond the few theoretical accounts exploring the meaning and nature of well-being (Frey, 2000; Blanchflower and Oswald, 2004; Helliwell et al, 2004; Braybrook, 2008; Dean, 2009).

Everyone seems suddenly to be concerned with well-being. In the political realm, President Sarkozy's invitation to Joseph Stiglitz to chair the Commission on the Measurement of Economic Performance and Social Progress, produced a clear emphasis on the importance of promoting and measuring well-being, given that "GDP is an inadequate metric to gauge well-being over time particularly in its economic, environmental, and social dimensions" (Stiglitz, Sen and Fitoussi, 2009: p.8). In defining well-being, the Commission adopted a multi-dimensional approach that captured: material living standards (income, consumption and wealth); Health; Education; personal activities (including work); political voice and governance; social connections and relationships; environment (present and future conditions) and security, of an economic as well as a physical nature (Stiglitz, Sen, Fitoussi, 2009: p.14-15). More recently, the UK Prime Minister has argued that

"It's time we admitted that there's more to life than money and it's time we focused not just on GDP but on GWB – general wellbeing ...wellbeing can't be measured by money or traded in markets. It's about the beauty of our surroundings, the quality of our culture and, above all, the strength of our relationships. Improving our society's sense of wellbeing is, I believe, the central political challenge of our times"

(David Cameron quoted in Stratton, 2010b).

Academic research into the various aspects of well-being has a longer pedigree and predates the recent political interest. In 2007, Johns and Ormerod highlighted that the concept itself - and its relationship to other fields of study - had become very fashionable. By 2000 there were more than 4,300 articles on



the issue published in academic journals (Veenhoven, 2007). However, this growth in interest is far from universally accepted or welcome and there is much confusion over the language and concepts used in the research.

Although many scholars use well-being, happiness, life satisfaction and quality of life as synonyms, whether they actually are in fact interchangeable remains uncertain (Jordan, 2008). The difference between the concepts is not mere semantics but crucial to understanding the concept. Diener outlines the debate over language succinctly, stating that the terms have dual definitions, both broad and narrow, “like happiness, well-being is a widely used term, and it too can potentially have many meanings” (Diener, 2009: p.9).

Bok (2010) continues this debate on the distinction between the terms saying “happiness seems to refer to one’s immediate feelings and impressions while satisfaction connotes a more cognitive appraisal of one’s life as a whole” (Bok, 2010: p.9). However, despite making this distinction between the terms Bok also acknowledges that, in practice, “researchers tend to use this term interchangeably, I do likewise...” (Bok, 2010: p.9).

Dooris (1999) summarises the languages used in different concepts by highlighting “a strong tendency for different professional and sectoral groups to hold on to a particular language (and by implication, framework), and to advocate the use of this with an almost evangelical and fundamentalist fervour” (Dooris, 1999, p.9). Although Dooris was not discussing the relationship between happiness, well-being and life satisfaction; the findings – specifically those on the barriers created by language used in these concepts – are especially relevant for the study of well-being in a public policy arena. Stratton (2010) similarly acknowledges these difficulties, but queries whether politicians are as concerned as academics about the linguistic distinction involved offering to “substitute happy with the compound noun well-being” (Stratton, 2010).

The promotion of well-being and the goal of greater quality of life has been increasingly acknowledged as an objective of economic, social and

environmental public policy interventions (Bacon et al, 2010). However, research into the politics of well-being is much less widespread and remains in an embryonic state (Bok, 2010). At the sub-national level, whilst there is some research into how local government can promote well-being (Bacon et al, 2010), this research offers a narrow perspective on the role of governance structures and political institutions in public policy, and how reshaping public policy can promote well-being. At the local level, some local authorities use a range of terms to define quality of life and pursue projects to promote local community well-being; others adhere to a single strand of central government policy to define and measure well-being.

Understanding well-being within the contemporary political agenda is invariably linked to the shrinking of the State and the rise of the Big Society. One route to achieving the Big Society is to engender social capital that can improve community cohesion. The most achievable route to promoting community cohesion is by decentralising power from central government to local government to local communities. Through decentralising power, communities' can take responsibility for their own well-being rather than central government holding ownership. New Localism, through decentralising power, from central government eventually to communities, also links to community well-being. Discussing the distinction between rhetoric and reality in the politics of New Localism, Stoker reflects that:

“there is undoubtedly much that is pure rhetoric in the new found interest on the part of New Labour in localism and much that represents a strategic political response to possibility that the Conservatives might use localism to attack the control freakery, state paternalism and big spending plans that could be said to characterise many of New Labour's policies”

(Stoker, 2004: p.118)

Even though Stoker is discussing New Localism, similar conclusions could be drawn about the politics of well-being. The contemporary politics of well-being merits further investigation; well-being as a topic seems to have been absorbed into the political mainstream as an issue for all major political parties in Britain:

“Today’s generation want more than a job, more than to earn simply to enjoy. They want a good job. They want a career. They want to develop as individuals through work as well as through the hopes and fears of family life. Our purpose should be to help them achieve that ambition” – Tony Blair

“It’s time we admitted that there’s more to life than money and it’s time we focused not on GDP but on GWB – general well-being. Well-being can’t be measured by money or traded in markets. It’s about the beauty of our surroundings, the quality of our culture, and, above all, the strength of our relationships” – David Cameron

(The Independent: 2007)

Although debates on happiness and the good-life go back to Aristotle, research into well-being is still “in its infancy compared with most other fields in the social sciences” (Bok, 2010: p.211). The academic assessment of well-being can be organised into a number of key themes. They are the clarification between types of well-being, the impact that income has on satisfaction and the inaccuracy of certain types of well-being and the problems this might create for the measurement of well-being.

- In 1974, Easterlin found that average levels of satisfaction and well-being did not increase in line with income – specifically, that average happiness in the US had not risen substantially over the past half century despite significant economic growth in per capita incomes (Easterlin, 1974; Stutzer, 2004).
- Sumner (1996) offered an important clarification for classifying differing aspects of well-being summarising that “I believe there to be an interpretation of the subjective / objective distinction such that subjectivity turns out to be a necessary condition of success” (Sumner, 1996: p.27). The distinction between subjective and objective definitions offers a more practical perspective to evaluate well-being.
- Another key milestone is the discovery by psychologists that people’s subjective well-being is often inaccurate (Putnam, 2001; Gilbert, 2007; Kahneman and Thayer, 2006). Putnam (2001) found that people are surprisingly bad judges of what will make them happiest, particularly if the happiness or unhappiness they experience will be temporary or

permanent. Sale et al (2002) state that “reality is socially constructed and so is constantly changing” (Sale et al, 2002: p.353); by adapting this logic to well-being it can be seen that well-being is in a constant state of flux because it is a socially constructed concept, which further reinforces the relevance of the subjective distinction. Diener then underpins that distinction with the hypothesis that “all definitions of well-being imply an evaluation” (Diener, 2009: p.9); this does not reduce the importance of the objective, which Diener (2009) later acknowledges the worth of but emphasises the necessity of the subjective assessment. Even so, Sumner’s (1996) distinction adds to the problems inherent in measuring the subjective well-being of a population.

- In 2004, economists found that income inequality does not lead to more dissatisfaction (Alesina, Di Tella and MacCulloch, 2004).
- This conclusion was further reinforced by Veenhoven and Hagerty (2006) with their provocative finding on the relationship between well-being and the welfare state noting that “there is no evidence of a growing disparity between happy and unhappy citizens in rich nations, the reverse has happened...” (Veenhoven and Hagerty, 2006: p.13). Veenhoven and Hagerty’s study also found no correlation between the amount that a government spends on social welfare programs and the health, happiness or longevity of the recipient populations (Veenhoven and Hagerty, 2006).

Johns and Ormerod offer two potential conclusions: “either that attempting to improve the human lot through economic or social policy is futile, or that happiness data over time is an extremely insensitive measure of human welfare” (Johns and Ormerod, 2007: p.13). Johns and Ormerod also submit a potential conclusion for Easterlin’s (1974) finding regarding the inverse relationship between growth in income and subjective well-being, stating that “people become accustomed to the new, higher levels and would feel less happy if these were reduced to their previous levels” (Johns and Ormerod, 2007, p.14).

Much of the modern renaissance of academic interest into understanding the root causes of well-being has been made in the broad fields of economics and psychology. This is characteristic of the debate around income and satisfaction, the wider debates around economic growth and the view that happiness, not income, is the overall motivation device for humanity (Layard, 2005). However, well-being can now be linked to a number of wider debates around the pursuit of economically, socially and environmentally balanced development.

Research into well-being is moving away from the traditional conceptual bases of sustainable development and health towards newer fields of law (Posner and Sunstein, 2010) and wider public policy (Johns and Ormerod, 2007; Diener, 2009). Whilst the link between well-being and sustainability is somewhat debateable, the UK the Government Department with the responsibility for well-being is the Department for Environment, Food and Rural Affairs (Defra). Dolan and Peasgood (2006), moreover, submit that there is “very little evidence on the relationship between sustainability and well-being” (Dolan and Peasgood, 2006: p.37), and that more research is required on the relationship.

Recent research into well-being found significant overlap between environmentally friendly living and greater well-being (Bacon et al, 2010) and highlighted the need for a holistic physical, natural and human focus rather than a solely socio-economic one (Stiglitz, Sen and Fitoussi, 2009). This growth in the debate has not been limited to academic circles; instead it has been matched by increasing curiosity amongst policy-makers. However, this almost exponential growth in debate has yielded problems.

Layard's (2005) definition on the factors that impact on well-being could only be applied to western developed societies and even then only to certain groups within those societies. For this reason a normative view of well-being is problematic, which presents a challenges for policy-makers. For example, a decision to build a skate park on an open field for use by young people might enhance the well-being of some groups of young people (although not all), but would this enhanced well-being be felt by other groups in the community? So

what promotes a greater sense of well-being may not do so for another group or the same group at a different time.

Recent academic advances into the factors associated with promoting well-being have presented practical problems. Particularly:

1. Veenhoven and Hagerty's (2006) findings that present no link between the degree of government expenditure (on social welfare programs), and the level of happiness that the general population experiences and
2. the inaccuracy of subjective well-being (Putnam, 2001; Gilbert, 2007; Kahneman and Thayer, 2006).

These two findings challenge policy-makers' efforts to promote well-being through public policy. Instead of having specific policies whose primary aim is to promote well-being, would it be more effective to make the promotion of well-being the secondary aim of all public policy? As Bok acknowledges that "almost everything a government does is meant in one way or another to increase the well-being of the citizenry" (Bok, 2010: p.205).

Diener acknowledges these inherent problems of the perception of well-being policies "as a half-baked attempt to make people happy all the time" (Diener, 2009: p.8). Bok cites Jeremy Bentham's principle of 'net happiness' in reference to this particular problem, citing Bentham in that "the overriding aim of government should be to secure the greatest happiness of the greatest number of people by maximising pleasures and minimising pain" (Bok, 2010: p.4). Layard's (2005) research on the causes of well-being is intended to be a modern incarnation of Bentham's happiness principle, noting "we now have a society in which there is no agreed philosophical basis for public policy... pragmatic policy-makers claim to be doing 'what works'" (Layard, 2005: p. 112).

However, importantly, Bok (2010) doesn't directly mention how Bentham's greatest net happiness principle should be pursued. In the recent well-being renaissance, public policy has pursued an interventionist role in regard to promoting well-being, whilst neoliberal commentators pursue the notion that governments cannot make people happy. Instead, Wolf (2007) argues that happiness is something that should be pursued individually. Therefore, a

neoliberal approach to the promotion of well-being might offer greater quality of life than the previous attempts. This is particularly the case since, as Wolf (2007) highlights, classical liberalism is not undermined by this new science of happiness.

### *Well-Being and Public Policy*

Layard (2005) cites that just six factors account for 80% of the variation in reported subjective well-being; divorce, unemployment, belief in God, quality of government, membership of non-religious organisations, and the level of trust felt within a society. Obviously, policy-makers cannot simultaneously target policies against all of these six factors. Policy-makers can however target some of them to reduce the variation of subjective well-being in the population. However, how can policies to promote well-being be understood and how can policies be developed to improve people's well-being in the wider context that now includes the Big Society? The Big Society is a flagship policy from the 2010 Conservative Party general election manifesto, the aim of which is to create a climate that empowers local people and communities (Cabinet Office, 2010). The Times said the Big Society offers "an impressive attempt to reframe the role of government and unleash entrepreneurial spirit" (The Times, 2010).

Bok (2010) observes, the politics of well-being is an emergent area of research. In a political climate that now includes both the Big Society and deep cuts in public sector expenditure, a more pragmatic - and ultimately more achievable - route to greater well-being for the population should be adopted. An approach that engages multiple levels in a joined-up process may prove to be ultimately more achievable. McMahon's (2002) research found that a partnership approach between the local authority and local community groups offered a stronger approach to the development of the local level performance metrics. By fostering an enabling approach to community governance, local government could take the lead in the Big Society by developing policies to promote local well-being. In many local authorities, a more generic enabling approach may already be in place, but often not in relation to promoting local well-being.

Rather, by adopting an enabling approach to promoting local well-being, this kind of approach would utilise McMahon's (2002) partnership experience and allow an unfettered approach to promoting well-being. It would embed well-being as a goal in local as well as national policy, which would engender a multi-level approach that could prove ultimately more achievable.

Whilst national government focuses on achieving macro-level goals that would prevent negative well-being (i.e. reducing unemployment and working to enhance the quality of government), local authorities could work to reduce any barriers to greater well-being by tailoring policies that could achieve the piecemeal bottom-up approach that HM Treasury (2008) outlined. In the face of reduced expenditure and a shrinking role for the State, the Big Society (through the decentralisation of power) represents an opportunity for local authorities and community organisations to step forward to seize the opportunity to promote local well-being. Bacon et al acknowledge this is "particularly important during periods of recession and recovery" (Bacon et al, 2010: p.86).

Schumpeter (1950) argued that times of economic uncertainty provide for innovative policy-making. At a time when localism and well-being are matched as policy priorities of the Coalition Government, when local government will have to pursue a radically different approach to governance to meet growing demands with fewer resources, the Big Society represents a method of giving an additional impetus to the goal of greater well-being as the central aim of policy. This method would be in line with the Coalition Government's desire that well-being data has a more central role in policy-making (Hoskin, 2010; Stratton, 2010b). Bok highlights that "government officials could draw upon the new research to rethink their priorities and make a more balanced effort to promote well-being (Bok, 2010: p.208).

Some local authorities may be more encouraged to actively promote well-being locally with the news that it is to be measured – although a 'driven' approach to the promotion of well-being would significantly undermine the localism agenda. Nesta, however, notes the role that one local authority in the development of



social care provision that “reminds is that behind many central government innovations lie the important lessons from testing, developing and prototyping new ideas at the local level” (Nesta, 2010: p.16). HoC (2002) findings would reinforce the validity of this ‘incubator’ role by highlighting local authorities’ that have pre-empted central government’s focus on well-being.

## Theoretical Approach

The theoretical approach to well-being in this thesis reflects the philosophical position of the current academic research. It must be stressed, however, that this research project developed as an iterative process that did not adopt a normative theory of the politics of well-being because a normative definition does not (yet) exist in the literature. As Bok notes, current academic research into well-being has only developed a specific strand i.e. how to measure well-being and the implications of well-being metrics for future policy:

“after 35 years of intensive research ... researchers have succeeded in doing what Bentham could not accomplish: to devise a way of measuring how happy people are and how much pleasure or pain they derive from the ordinary events and conditions of their lives.”

(Bok, 2010: p.204)

A normative theory of the politics of well-being may be elusive as Bok cites “almost everything the government is meant in one way or another to increase the well-being of the citizenry” (Bok, 2010: p.205). However, a theory for well-being in public policy could be attainable. Diener outlines a hypothesis for well-being in public policy reflecting that a “definition of well-being is similar, if not identical, to modern definitions of well-being in economics, where well-being is typically called utility” (Diener, 2009: p.5). Nevertheless, although a macro theory for the politics of well-being may remain elusive; a more defined theory could be developed. Therefore, whilst Diener (2009) outlines implications for well-being metrics in public policy, the use of the PoWB – and discretionary activity – could inform a theory for the role of local political institutions in developing well-being. The development of a local government typology, through stratifying different types of local government autonomy, to classify

different categories of local authorities would contribute to the existing academic research on the politics of well-being.

This thesis will adopt a holistic perspective, encompassing both theoretical and practical standpoints; that is to say, political science and local government. This thesis will differ from those previously presented, by exploring the role of political institutions and institutional factors that have led to adoption or inhibition of the PoWB. This thesis will explore whether the current legal arrangement (the PoWB) is sufficient to genuinely promote the well-being of local people, and whether there are further policy implications for the future of localism and local government autonomy. Given the inherent difficulties in establishing a normative definition of well-being, which could translate into differences interpreting the PoWB, this thesis will adopt an interpretive position (Rhodes, 1981; Bevir and Rhodes, 2002). Whilst the methodological discussion will be discussed in more detail later in the thesis, the approach that this research takes to the investigation will be an interpretive design because local authority officers' and elected members' perceptions and interpretations of the PoWB are crucial. An interpretive basis for the research offers the best method to capture officers' and members' perceptions.

This research project, however, will also adopt a multi-method approach by including a positivist element. In order to provide additional validity, and verify existing trends and statistics, on the use of the PoWB, a survey of all local authorities in England will be included in the initial stages of the research process. The survey will be limited to England because the PoWB is only available to English and Welsh local authorities. Also, the differing nature of the devolved administration in Wales could affect the use of the PoWB so the decision was taken to limit the scope of this research to English authorities.

Additional validity will allow this thesis to use the research findings to generate new statistics on contemporary nationwide usage of the PoWB. If different to those previously presented, these statistics on use of the PoWB can be used to challenge previous attitudes on local authority officers' and members' attitudes

towards discretionary activity and exercising their autonomy. Nevertheless, the bulk of the original data for this thesis will come from semi-structured interviews with local authority officers' and elected members in case studies. The case studies will draw upon examples of local authorities that have demonstrated ambitious use of the PoWB, and therefore able to provide additional insight into any common factors that would promote or inhibit the use of the PoWB by local government.

## Hypothesis

As highlighted earlier in this chapter, there is currently a lack of academic investigation into well-being in public policy and its impact for the future of policy-making (Bok, 2010). Moreover, there is little contemporary academic debate on how policy interventions have shaped community well-being, and the role of local political institutions in promoting local well-being. This thesis will offer original insight into the role of local government in promoting local well-being, how politics can promote well-being, and how officers' interpretation of the PoWB affected its use. This original knowledge will then inform a framework to conceptualise levels of autonomy for local government, and a contemporary typology of local government to distinguish between local authorities by discretionary activity.

The preliminary hypothesis of this thesis is that the PoWB was not widely used by local authorities because local authority officers are overtly risk averse, did not fully appreciate the potential autonomy that the PoWB granted authorities and did not accept that the PoWB represented a power of first resort. The attitudes adopted by local government officers and elected members may have been underlined when the projects highlighted by central government as examples of the usefulness of the PoWB were resource intensive strategic projects – not operational projects. Therefore, it may not have emboldened local authorities to push operational boundaries of their autonomy. This is because there were few – if any – examples of the PoWB enabling local government to act beyond their traditional operational purview.

This hypothesis is based on two assumptions. Firstly, that the reported 15% (Williams, 2010) of local authorities have used the PoWB is inaccurate. This figure may in fact significantly under-represent the actual use of the PoWB. For example, local authorities may not advertise their use of the PoWB for fear of legal challenge. This thesis will verify the accuracy of the reported low usage of the PoWB as an initial part of this research. Secondly, that authority officers and members were able to use the PoWB. That is to say, local government's use of the PoWB was not restricted by central government. Besides the legislative restrictions, this thesis will explore any further constraints on local authorities' use of the PoWB. This investigation will produce original evidence that will offer insight into local authorities' use of the PoWB. The following section will outline the structure of this thesis, and how this investigation will take form.

## Structure of Thesis

The subsequent chapters in this thesis can be broadly divided into two categories. Firstly, those chapters that are devoted to addressing philosophical, conceptual and theoretical issues. Secondly, chapters that outline the original data – the principal and tertiary authority case studies and the scoping studies with senior legal officers.

Chapter 2 explores and critiques the existing academic literature on local government and well-being, providing a review of existing themes. Current academic literature on local government suggests that it is comparatively weak because of a relative lack of fiscal and statutory autonomy; if this is inaccurate then it could represent a self-fulfilling prophecy. If so, this would further undermine the drive towards greater localism. Equally so, the focus on the duality of central-local relations may only serve to falsely emphasise the homogeneity of both governmental levels (Leach and Percy-Smith, 2001; Blond, 2009).

By examining the current academic literature on tertiary authorities, this chapter will establish a hypothesis that conceptualises how tertiary authorities function within the artificial dichotomy of central-local relations. Academic research into the role of tertiary authorities – Parish and Town Councils – is extremely limited. Contemporary evidence and analysis of the use of discretionary legal power (the PoWB) by tertiary authorities is scarce. The data from the tertiary case study authorities' on their use of the PoWB, and perceptions of central-local relations, will offer original insight to disestablish the homogeneity. The original research into tertiary authorities in this thesis further underlines the original contribution to knowledge.

Where chapter 2 explores the existing academic debate, chapter 3 establishes the rise of well-being in a contemporary domestic political agenda and maps the policy context since 1997 from which the PoWB has emerged. Chapter 3 will outline an initial scoping study that was used both to triangulate the latter stages of the research and to provide contemporary nationwide evidence on use of the PoWB. The initial scoping study took the form of a postal survey to all English principal tier local authorities. Chapter 3 will also examine in detail the impact of the Local Authorities Mutual Limited (LAML) ruling on the use of the PoWB by local authorities. Chapter 4 will provide an in-depth discussion on the main theoretical approaches, and research design, adopted in this thesis. This chapter will identify, outline and justify the methods that will allow this research to most successfully achieve the objectives outlined in the beginning of this chapter. Aside from the theoretical issues addressed in earlier chapters, relating to the subject matter and the philosophical basis for the research, this chapter will primarily deal with the research design.

The design has three strands. Firstly, the postal survey to gather nationwide data on officers' perspectives on the PoWB. Secondly, four case studies with principal and tertiary tier local authorities that have demonstrated use of the PoWB to offer in-depth perspectives on common factors instrumental in the use of the PoWB. Each case study included four or five interviews with senior officers and elected members from the authority. Lastly, the third research

strand, nineteen scoping interviews with senior local government legal officers' to bolster the national data and provide in-depth legal perspective on the PoWB. Altogether, thirty seven interviews were conducted.

As chapter 4 will outline the research design, chapters 5 – 8 will present the research findings from the case studies. Chapter 5 and 6 will outline the findings from the two principal tier case studies and chapters 7 and 8 will to detail the findings from the two tertiary tier case studies. Chapters 5 – 8 also will provide local and political context of the authorities and offer a thematic evaluation of the case study findings. The findings fall into six broad themes, which are:

- awareness of the PoWB, covers officers' and members' awareness of discretionary and specifically about the technicalities of the PoWB.
- attitudes towards use of the PoWB, explores authority officers' and elected members' attitude towards exercising discretionary activity through the PoWB.
- policy focus, which covers officers' and members' understanding of the background of the PoWB and its role in policy in each authority.
- role of local government, which covers officers' and members' perception of the role of local authorities.
- relationship between central and local government, covers the potential influence that central government can exert on local autonomy.
- future challenges, will categorise potential common factors that would inhibit local government discretionary activity and prevent authorities' exerting their organisational autonomy.

The findings presented in chapters 5 – 8 will provide the basis for the categories in the local government typology. The typology concept, using the case study authorities as examples, will be outlined in chapter 9.

Chapter 9 will draw together the key findings from the four case study authorities and present an evaluation of the evidence. The evidence from the four case studies, when combined with the data from the scoping studies, will present evidence on common factors that prohibited or promoted the use of the PoWB. Chapter 9 will also discuss the impact that organisational capabilities, and the culture of an authority, have on the use of the PoWB.

The typology will classify local authorities into three broad categories by their demonstrated attitude towards discretionary activity. Those classifications are:

1. *proactive authorities*: this encompasses those authorities that demonstrate an outward-looking practical and ambitious approach to discretionary activity.
2. *cruising authorities*: this includes those that have demonstrated limited ambition towards extra-statutory activity and limited use of the PoWB. They adopt a limited – almost overtly cautious – interpretation of the PoWB.
3. the *reactive local authority*: this will include authorities that have similar capabilities as cruising authorities but demonstrate a narrow interpretation of the PoWB or exhibit a lack of organisational ambition.

Chapter 10 will conclude the research by underlining the key findings, exploring the key issues and the ways in which these findings on the PoWB impact on perceptions of local government autonomy. Chapter 10 will use the evidence from this research to distinguish between conceptualisations of local government autonomy. The most significant distinction in a conceptual framework of an authorities' autonomy is the distinction between strategic and operational types of autonomy.

The distinction between types of local government autonomy may offer additional insight into authorities' genuine autonomy. Whilst the introduction of the PoWB may have increased the theoretical autonomy of local government, the imposition of performance metrics that allow central government to guide local outcomes (Pratchett, 2004) undermines local autonomy. Furthermore, academic debate on local autonomy has included expressions such as 'partial or earned autonomy' (Wilson and Game, 2006) and 'choice within constraint' (Pratchett and Leach, 2004), however, the distinction between modes of autonomy has not been discussed in detail.

Operational autonomy, which includes applied freedom and political freedom, covers individual authorities' capabilities. Strategic autonomy, which encompasses statutory freedom, covers local authorities' theoretical ability to engage in discretionary activity. The chapter will then conclude the research and highlight areas for further academic research. Chapter 11 will conclude by

discussing any potential impact of the research findings on future implications for localism, and outline the impact from this research on the post-2010 debate on the General Power of Competence.

## Summary

Stoker underlines that “there will remain a central role for elected local authorities as the over-arching ring holders in their communities, local authorities have through various pieces of legislation the capacity to perform this basic community leadership role” (Stoker, 2004; p.126). New Localism offers a method to enhance the autonomy of local authorities; however this research will shed light on whether it fully enables genuine local autonomy. As New Localism reduces the potential for uniformity, one consequence of institutional diversity is divergence between communities that has significant territorial justice implications. Pratchett addresses the territorial justice implications by highlighting the potential role of central government, stating that “central government has a primary role to play in ensuring territorial justice, equity and the collective provision of public goods” (Pratchett, 2004: p.369). In highlighting the role that central government can play, there are implicit questions on the impact on central-local relations and questions on the impact of New Localism on central-local relations themselves. New Localism is not without criticism (Walker, 2002; Pratchett, 2004).

A similar assessment of the PoWB could be made. The extent to which the PoWB supports and emboldens local authorities to pursue discretionary activity could be questionable. This study will explore the impact that the PoWB has had on local authorities’ autonomy, generating original knowledge by providing a detailed perspective on autonomy, and how the take up of the PoWB has influenced autonomy. The findings will provide assistance in examining the difference between ‘*proactive*’, ‘*cruising*’ and ‘*reactive*’ local authorities. Whilst there is limited academic literature on the politics of well-being, the following chapter will outline and critique the main academic debates that relate to this research project, and discuss how they impact on the use of the PoWB.



## Chapter 2: An exploration of the literature

This chapter will provide a critical review of the existing themes in the literature on local government in the United Kingdom which underpin the key focus of this thesis. These are:

- The shifts in central-local relations in the UK.
- The growing focus on New Localism
- The devolution of power beyond local government into communities.
- The role that innovation plays in creating agile local government (Demos, 2008)
- The change in policy priorities for local government
- The growing emphasis on well-being in public policy in the UK.

These themes have been selected because they offer insight into the relationship between levels of government, the evolution of public policy in the UK and a potential explanation for local authorities' activities that can address the research question. To consider the current nature of the governmental relationship in contemporary Britain, a perspective on the recent history of inter-governmental relations must first be established which provides greater insight into the renaissance of localism and the growth of well-being.

### *Central - Local Government relations in the UK*

#### *The basis of local government and the ultra vires principle*

Comparatively speaking, local government in the UK is statutorily weak (Atkinson and Wilks-Heeg, 2000). A House of Commons report (2009) highlighted that the United Kingdom is one of the developed worlds' most centralised democracies. Whilst local government has the power and ability to lobby central government, the significant majority of financial and legislative powers remain in Whitehall. Local Government's "role and influence is clearly limited" (Atkinson and Wilks-Heeg, 2000: p.254). Although there are some exceptions to this statement, specifically local government's powers to raise limited finance and pass by-laws, these exceptions are made at the discretion of

central government. These relations are defined by; the absence of a formal written constitution, held together by case-law from Judges and statutes from Parliament (Loughlin, 2001), which is further compounded by the fact that local government is contained within the ultra vires principle (Morphet, 2008).

“The ultra vires principle protects the community against possible tyranny, extravagance and foolish or politically motivated adventures by its local councillors. ... it has been frequently argued that the ballot box is sufficient safeguard and therefore the ultra vires principle and the limit on s.137 discretionary spending are unnecessary”

(Ellwood, Tricker and Waterston, 2000: p.8)

The question of local government reform and the role of local authorities has been central to governmental relations in the UK since the end of the Second World War. More specifically over the last 30 years, relations between central and local government in the UK have been strained; often combative rather than consensual or supplementary. Relations have been characterised as both a ‘complex game’ in which each side is manoeuvring for greatest strategic advantage (Rhodes, 1981), or even a ‘swinging pendulum’ (House of Commons, 2009).

Wilson and Game make an important distinction between types of relations between central and local government - specifically administrative, functional and political - and that when central governments decentralise they “may choose to do so in different ways and to different degrees” (Wilson and Game, 2006: p.25). However, no single model can accurately portray the nature of relations between central and local government because it often differs over time (between governments) and between policy areas.

Leach and Percy-Smith note that the term central-local only offers two sides to the argument, when in practice there are many more that only serve to “exaggerate the coherence and homogeneity of the centre” (Leach and Percy-Smith, 2001: p.213).

Characterisations of the relationship between central and local government as a game (Rhodes, 1981) suggests that ultimately one side is superior to the other.

Although this interpretation may have been accurate during the mid-1980s, it may not be the case currently. This combative nature is partially the result of historical distrust between the two levels of government. This distrust is easily displayed by a sense of unwillingness on the part of central government to devolve operational discretionary powers and financial freedom to the local level. Ministers will not devolve power to local government whilst they are still held accountable for all aspects of public service both by the public and the media (IPPR, 2009).

In a sense, this culture of central accountability only serves to reinforce the centralised political culture in the UK today; what Loughlin (2001) refers to as a state of 'hyper-centralism'.

#### Policy differences, centralism and localism

In the intervening period between 1979 and 1997, over two hundred Acts of Parliament were enshrined in law that affected local government on an operational level. In those years local government saw significant levels of change in the public policy landscape; central government reduced local government's discretionary power, created quangos to oversee and scrutinise decisions, and built up central oversight of local government finance (Wilson and Game, 2006).

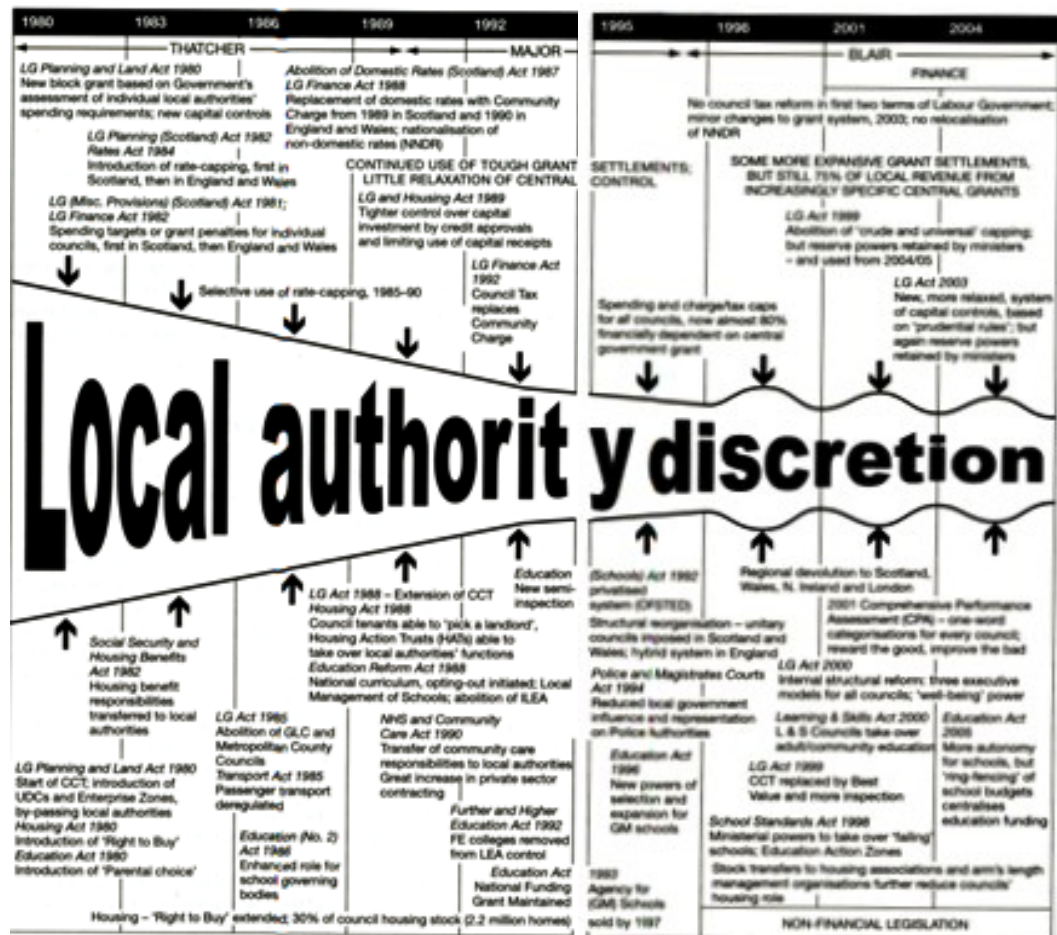
Perhaps this centralising tendency is behind the actions of the 1979 Conservative government. Despite holding a greater share of councils under Conservative control than any other political party, the Conservative administration initially aimed a barrage of reforms at local government finance (Wilson and Game, 2006).

In the following parliamentary session of 1983, legislation was finally aimed at local government structure itself. Although the stated reasons behind these reforms were that those institutions were redundant; some scholars have argued that there was a partisan aspect to this decision i.e. some Labour local authorities wanted greater public spending and the Greater London Council proved to be a rallying point for opposition to the Government (Atkinson and Wilks-Heeg, 2000; Wilson and Game, 2006; House of Commons, 2009). Central Government imposed policy changes on local government through restriction of finance or directly through statute, which often led to local and extremely vocal opposition.

Leach and Percy-Smith (2001) highlight two separate occasions when Central Government imposed fundamental comprehensive structural reforms on the local government system; in 1972-4 and 1992-6, when the existing local government structure was reformed in favour of new arrangements.

Walker (2000) highlights the 'stress tests' during the 1980s, in Liverpool in 1984-85 and Hackney in 1996-97, when "services continued to be provided even as political regimes collapsed" (Walker, 2000, p.3). Atkinson and Wilks-Heeg highlight that the abolition of the Greater London Council is a prime example of the comparative weakness of British local government as "a scenario such as this would be unimaginable in a political system such as Germany where local government has certain rights enshrined in the constitution" (Atkinson and Wilks-Heeg, 2000: p.255).

Despite New Labour's commitment to the European Charter for Local Self-Government, local government in the UK lacks legal and fiscal autonomy from central government (Atkinson and Wilks-Heeg, 2000).



The temptation to assign one party a centrist label and another a localist label is, however, too broad and offers an overly simplistic perspective on the debate. Blond summarises that “market versus statist thinking is a crude false dichotomy” (Blond, 2009: p.7). Walker cites research that highlights reforms to local government finance, offering an example of centralistic reforms launched by the Labour party; stating that “offering chambers of commerce a *de facto* veto on supplementary rate levies – harked back to the mid-1980s” (Walker, 2000: p.2). Mason and McMahon propose that the degree of central control over local government is growing, citing “Local Area Agreements are another means of *de facto* central control of local authorities” (Mason and McMahon, 2008: p.40). Equally so, the assumption that the 1997 general election result “heralded the prospect of a return to a more consensual mode of relations” (Midwinter, 2001: p.311) would, in hindsight, seem to be questionable.

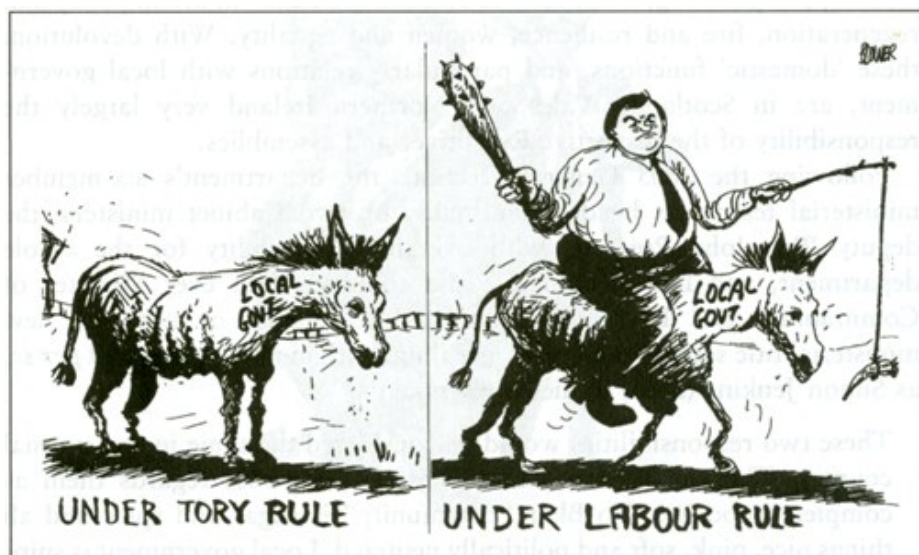


Figure 2: Local Government (Local Government Chronicle, 15<sup>th</sup> August)

Great Expectations: local authority discretion

Morphet terms the post-1997 era “great expectations” stating that “local authorities wanted to have their power restored and then to be left alone” (Morphet, 2008: p.11). Mason and McMahon highlight that since 1997 and up until 2008 28 Acts of Parliaments have imposed new duties on Districts Councils alone, and that “Unitary and County councils ... have seen even more

legislation” (Mason and McMahon, 2008: p.39). Mason and McMahon also highlight the role that Government Offices and Regional Development Agencies play in local decision making, summarising that “regional offices have reportedly been imposing central government policies” (Mason and McMahon, 2008, p.41). This view was further reinforced by the LGA (2008) stating that government offices and regional development agencies are another means of ‘central control’. Wilson and Game (2006) highlight the centralised role that government offices play in local decision-making.

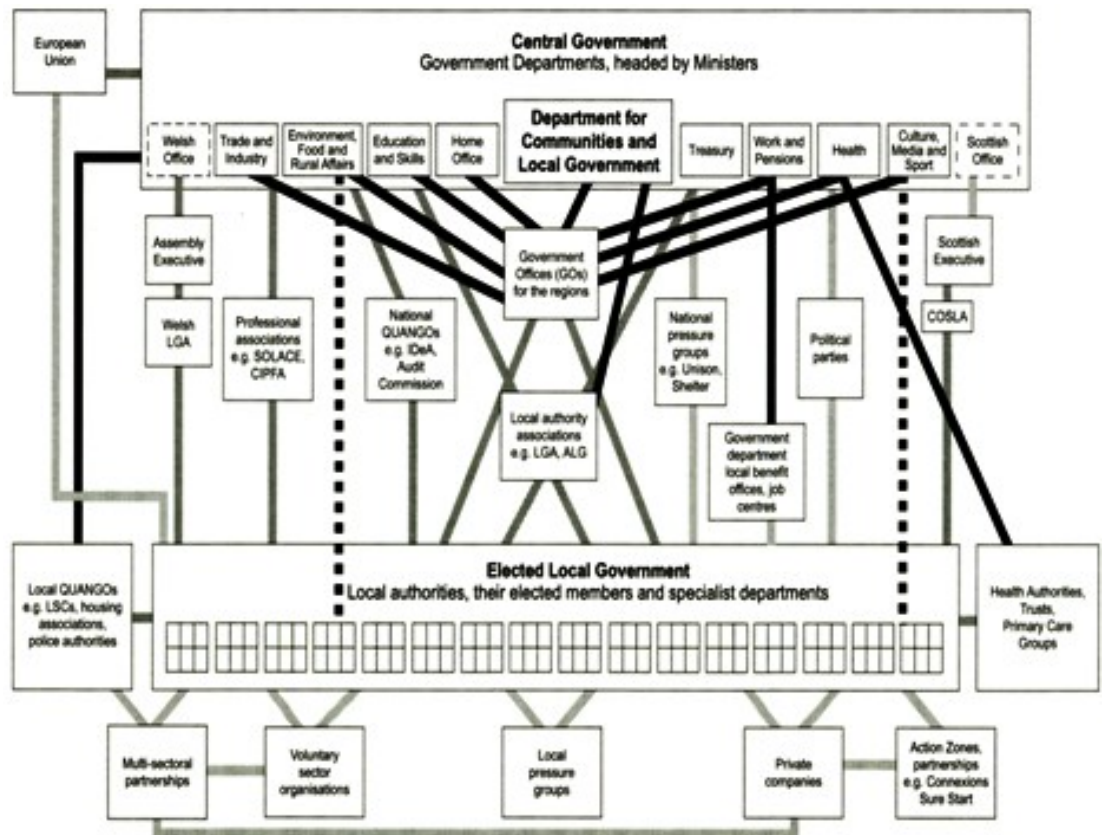


Figure 3: Institutional Landscape (Wilson and Game, 2006)

Whilst the rationale behind the majority of these reforms was to reduce inefficient and wasteful bureaucracy in local government, and to enhance local democracy by increasing the functions of borough and district councils (House of Commons, 2009); it has also been suggested that the intent was greater and deeper centralisation (Atkinson and Wilks-Heeg, 2000; Wilson and Game, 2006). There is, however, some dispute whether this intent was ever achieved (Atkinson and Wilks-Heeg, 2000).

## A view from the long grass: local authority autonomy

Two significant insights into Local Government's autonomy from Central Government and its function were offered by committee investigations: the Layfield report in 1974 and the Lyons review in 2005 (House of Commons, 2009). Both reports recommended greater local autonomy in relation to local government finance and a more strategic role for local government; the recommendations from both reports were dismissed for arguing in support of a 'politically contentious' local income tax (Morphet, 2008). Morphet highlights that the Lyons review offered "an opportunity to consider once again to consider local taxes, which may return as a key proposal some 30 years after the Layfield Committee" (Morphet, 2008, p.103). Both Committee investigations strongly advocated a localist position. Currently the power to raise revenue rests almost exclusively in Central Government, and this tends to shape Local Government's limited power and influence (House of Commons, 2009).

Mason and McMahon highlight that 75% of local spending comes from the Treasury; that "there is a lack of clarity" (Mason and McMahon, 2008: p.42) over local government finance through a mixture of central control over council tax, business rates and dedicated grants.

Despite the House of Commons's (2009) conclusions, of a growing focus on localism; Pratchett and Leach (2004) argued that a more centralised version of localism is actually taking place. Pratchett and Leach state that local government is "heavily influenced by central government priorities, such as community safety, the list of priorities in community strategies is becoming depressingly familiar" (Pratchett and Leach, 2004: p.367).

Pratchett and Leach also emphasise the quid pro quo nature of central-local relationship mentioned previously, stating that "if there is a balance, it is one which is greatly skewed towards central control / constraint" (Pratchett, 2004: p.367). Pratchett and Leach, however, also argue that local authorities retain



significant autonomy over local policy-making, albeit within central government initiatives and priorities, stating that “the challenge is to identify the areas where discretion or choice still exists and to exploit such opportunities to their full” (Pratchett and Leach, 2004: p. 367). Performance metrics represent evidence of centralised localism: “the centre not only defines the outcomes required in particular policy areas but also what constitutes good practice in a host of managerial contexts” (Pratchett, 2004: p.371).

Though problematic and tense, Walker (2000) and Morphet (2008) argue that the system is strong, highlighting examples of episodes where the system was tested to the extreme limit and yet survived (Walker, 2000). Whilst the Labour administration offered greater flexibility for local government – the PoWB (DCLG, 2008b) and a more significant strategic placing-shaping role – the prospect of freedom was accompanied by a centralising tendency e.g. the performance targets regime or the inability to raise finance. This mixed tendency has been characterised as both greater choice within constraint (Pratchett and Leach, 2004) and as control ‘freakery’ (Stoker, 2004).

Much of the literature on central-local relations focuses on two aspects of local government: legal authority and resources. An alternative point of view of the centralist / localist blend would focus on the responsibilities rather than formal powers. Morphet highlights that “central government and the civil service have always seen their strength in policy and legislation, leaving agencies and local government to deliver” (Morphet, 2008: p.112). This raises the point of responsibilities but does not address the decline of local government freedom in relation to service delivery and the rise of quangos (Wilson and Game, 2006).

This hints at the distinction between the sometimes adversarial but sometimes supportive or supplementary relationship between town halls and Whitehall Departments when in competition with other Departments. It builds upon the work done on ‘departmental pluralism’, which has “been employed to describe the fragmented nature of decision making” (Richardson and Jordan, 1979: p.28).

Leach and Percy-Smith (2001) build on this and emphasise that the current literature focuses on formal structures and institutional perspectives of the local *government* aspect to the paradigm rather than local *governance*, further criticising the literature for a tendency to “exaggerate the internal cohesion and homogeneity of both levels” (Leach and Percy-Smith, 2001: p.212).

Central government does have the lions’ share of formal powers e.g. tax setting, passing laws and regulation. However, local government has a significant amount of formal *and* informal powers i.e. local knowledge on the needs of the community and (to a degree) the ability to tailor policy delivery. Morphet (2008) acknowledges that local government does lack confidence, to the extent that in some cases it only does what is statutorily required by central government and does not undertake further action to avoid exposing the organisation to greater external risk. This hypothesis, that local authorities avoid action that may expose the organisation to risk, is also laid down as the main reason behind the low use of the PoWB. However this scenario only serves to reinforce the belief that the power lies in the centre rather than the locality.

Pickles hints at that belief but emphasises that local government has to step forward saying that “it’s not about giving away money anymore – it’s about giving away power – it’s about less intervention, encouraging communities to step up to the plate” (Pickles, 2010). This requirement for ambitious local authorities to step forward is not a new phenomenon.

New Labour passed a range of legislation to promote the community leadership role of local authorities (Sullivan, 2007). The PoWB represents one key power in the achievement of this objective (ODPM, 2006). Pratchett and Leach describe this agenda as allowing greater “choice within constraint” (Pratchett and Leach, 2004: p.366). However, Sullivan (2007) highlights that local government has had a community leadership feature since the mid-nineteenth century (Sullivan, 2007), which Nesta cite as the “glory days of municipal

government” (Nesta, 2010: p.16). Walker further echoes this point citing that since:

“modern administrative machinery was created in the mid-nineteenth century to provide public health and urban infrastructure, there have been few, if any, profound differences over basic purposes between local officials and representatives on the one side and the denizens of Whitehall and Westminster on the other”

(Walker, 2000, p.4)

Local Government discretion: rediscovering community leadership

Sullivan (2007) highlights that authorities’ rediscovered community leadership role then became a keystone of the Local Government Modernisation Agenda (LGMA). Sullivan (2007) also highlights that this role’s significance has varied in parallel to changes in relations between central and local government; echoing the point made earlier by Midwinter that:

“after nearly twenty years of conflict between central and local government, labour’s election victory heralded the prospect of a return to a more consensual mode of relations”

(Midwinter, 2001, p.311)

Characterising the tendency of central government to exert greater constraint, specifically over central policy priorities to ensure continuity over service provision, Pratchett and Leach (2004) illustrate the level of freedom held by local government in the delivery of services – which later is echoed by Morphet (2008). This perception is advanced by the fact that the PoWB was initially welcomed by local authorities; some tempered their consideration with scepticism regarding the seriousness of central government on this subject (ODPM, 2006).

The PoWB represented one more part of local government’s toolkit of discretionary powers that allows the freedom to pursue radical innovation in local policy-making. The rise of innovation in local policy-making was one key aspect of the modern rise of localism.

## *The Rise of New Localism*

Why localism?

Historically speaking, localism has been favoured for three broad reasons. It offers:

- the opportunity for political participation,
- a viable institution to deliver tailored local services and
- the opportunity to diffuse power and act as a balance off-setting central government

(King and Stoker, 1996).

Contemporary or 'new' localism has come to be considered as local government's ideology and enshrines the belief that because local government is closest to the community it therefore is the best level of government to offer services that are the closest match to the needs of the community (King and Stoker, 1996). However, Stoker (2004) highlights differences of opinion on how to best advance the new localist agenda, describing that for some advocates "established local government needs to be brought back into the frame as central to new localism; others are not so convinced and have other institutions to steer local governance in mind" (Stoker, 2004: p.117). This localist belief does seem to be contradictory to the conclusions of the IPPR (2009) report on intergovernmental relations; which highlights the relative weak position of local government (in comparison with central government) but it also portrays a self-reinforcing scenario that is highly centralist in its analysis.

The term 'New Localism' has been used to denote New Labour's approach to Local Government since 1997. It has been defined as a strategy aimed at devolving power and resources away from central control towards communities and the consumers of local public services (Stoker, 2004). Morphet cites that its origins lie in "pressures on government to consider whether it should divest more central power to the local level" (Morphet, 2008: p.106), and that the

primary motivation for new localism was economic in order to pursue more efficient government to promote the economic health of the State. Bunt and Harris argue that “local solutions are frequently very effective ... and they are often cost effective” (Bunt and Harris, 2010: p.3), because local solutions to problems allow for a greater degree of flexibility and heterogeneity when offering solutions to challenges. Stoker justifies the case for new localism on three grounds:

- firstly as a practical response to modern governance and social problems,
- secondly, to facilitate a more engaging form of democracy for the modern world, and
- thirdly, because new localism engenders elements of trust and builds social capital within communities which further encourages civic engagement

(Stoker, 2004).

However, Pratchett asserts that “most studies of local autonomy and local democracy fail to distinguish adequately between the two terms” (Pratchett, 2004: p.358). Pratchett also develops an additional distinction over variations of local autonomy; “freedom from central interference, freedom to effect particular outcomes and as the reflection of local identity” (Pratchett, 2004: p.358) and further argues that ‘new localism’s’ focus was directed more towards the ‘freedom to’ type of autonomy and that the PoWB “are an illustration of such a focus” (Pratchett, 2004: p.370). This implicit conclusion is that New Labour’s localist agenda did not extend universal freedom (i.e. neither ‘freedom to’ nor ‘freedom from’). As the PoWB was directed to extend “freedom to”, local authorities ‘freedom from’ was significantly reduced.

#### New Labour’s New Localism

Some local government scholars have stated that New Labour’s electoral victory in 1997 would herald the triumph of New Localism because of its popularity within progressive politics (Midwinter, 2001; Stoker, 2004). Stoker stresses the emphasis by citing that “the call for a shift in the approach to

reform and future of governance has become quite fashionable within progressive political circles” (Stoker, 2004: p.117). It is accurate that there has been significant effort on the part of the New Labour government to actively promote local authorities’ community leadership role. However, others dispute that beneficial reform of local government is limited to progressive politics. Rejecting the notion that successive Conservative governments enfeebled local government (Atkinson and Wilks-Heeg, 2000; Pratchett and Leach, 2004), former Conservative Minister Nicholas Ridley MP was a powerful advocate of local authorities as ‘enabling authorities’, where councillors met to allocate contracts to external providers who then in turn provided services cheaply - an early version of the strategic commissioning body.

On the rise of strategic local government, Stoker surmises that “the world of local governance would benefit from further institutional diversity, but there will remain a central role for elected local authorities” (Stoker, 2004: p.126). This is due in part to local government’s existing and historical capacity to perform a community leadership role, or legitimacy (Leach and Percy-Smith, 2001). Stoker also advanced the argument for further powers to be given to selected local authorities that “have the capacity to operate as the major strategic organisations for their area” (Stoker, 2004: p.126) as ‘charter councils’.

Pratchett further supports the extension of additional powers to selected local authorities surmising that “expressions such as constrained discretion and earned autonomy lie at the heart of the new localism vision” (Pratchett, 2004: p.369). Barrow, Greenhalgh and Lister (2010) emphasise this point, and call for the creation of ‘foundation councils’. Barrow, Greenhalgh and Lister suggest that ‘Foundation Councils’ could launch “trials in devolving more power to local authorities should be held in a number of sympathetic and well-managed local authorities” (Barrow, Greenhalgh and Lister, 2010: p.i).

A detailed examination of those local authorities that have actively pursued a greater role in the local community will highlight that political control over those councils’ is not limited to a single political party. This fact would seem to cast

doubt on the claim that New Localism is limited solely to progressive politics (Midwinter, 2001; Stoker, 2004). The scoping study outlined in chapter 3 will discuss the politics of new localism in further detail and offer contemporary evidence on political control of authorities that pursue an active community leadership role. This fact is again compounded by the pledge that a new Conservative government would introduce a new General Power of Competence, which would replace New Labour's flagship localist policy – the PoWB (Conservatives, 2009).

Pratchett goes further by demonstrating that localism has reached the mainstream of British politics, citing an example that “the Local Government Chronicle goes so far as to suggest that the new localism could be one of the battlegrounds of the next general election, as political parties compete to demonstrate how they will secure greater local autonomy and democracy across communities” (Pratchett, 2004: p.369). IPPR & PwC notes that “indeed it might be said that we are all localists now” (IPPR & PwC, 2009: p.4). This seems to place additional doubt that localism is limited to progressive politics by suggesting that localism has now transferred into the political mainstream.

Bunt and Harris (2010) follow IPPR's (2009) conclusions that localism has become a mainstream political objective. However, they add a qualification that in practice central government would find localism difficult to achieve as “centrally driven initiatives have struggled to make an impact on many of the complex issues confronting us today” (Bunt and Harris, 2010, p.4). However Stoker, whilst theorising on the degree of rhetoric involved in New Labour's localism, highlights that the mixture of localist and centralist policies:

“represents a strategic political response to the possibility that the Conservatives might use localism to attack the control freakery, state paternalism and big spending plans that could be said to characterise many of New Labour's policies”

(Stoker, 2004: p.118).

Atkinson and Wilks-Heeg adopt a more sceptical position of New Labour's policy, citing that “the extent to which New Labour is actually committed to

giving new powers to local government is still a matter for debate” (Atkinson and Wilks-Heeg, 2000: p.254). Highlighting that the proposal for local authorities to promote the well-being of the communities that they serve was originally absent from the draft Local Government Bill in 1999 (Atkinson and Wilks-Heeg, 2000). Pratchett argues that New Localism is more than “a normative reworking of concepts around local autonomy and local democracy: it also has practical implications” (Pratchett, 2004: p.368). Pratchett further echoes Atkinson and Wilks-Heeg’s (2000) tempered scepticism over New Labour’s commitment to localism citing “the same government has also been heavily criticised for its continuing centralisation strategies” (Pratchett, 2004: p.368).

Midwinter (2001) and Braybrook (2008) have highlighted central government’s aspiration that the PoWB represents a power of first resort: as an example of localism in practice. DCLG (2009) statutory guidance reinforces this aspiration stating that local government need look no further for legal power than the PoWB. Recent events would seem to imply that this aspiration has not been realised i.e. the London Authority Mutual Limited (LAML) ruling at the Supreme Court dealt the PoWB a severe blow (Ahmad et al, 2009; Crump, 2009; Eaton, 2009). LAML was an attempt by a group of London Boroughs to set up a mutual insurance company using the PoWB. Following a protest from a private company, that to do so was to act in contravention of open procurement regulations, the Supreme Court ruled that the PoWB did not include attempts to realise local government efficiencies – even if those efficiencies were invested in community projects.

The original LAML ruling by the Supreme Court and the subsequent Appeals Court ruling has dealt a severe blow to the PoWB. Whether it is a mortal blow remains to be seen. Even though joint action between Local Authorities (in terms of procurement, insurance and certain services) continues, the legal foundation that the PoWB is based upon has been damaged. Cautionary legal officers may question DCLG’s (2009) aspiration that the PoWB represents a power of first resort.



Pratchett (2004) highlights that New Localism is not without its critics. IPPR & PwC (2009) highlights a number of practical operational barriers to greater powers and responsibilities being exercised at the local level. These include:

- a lack of general consensus over which powers should be devolved – and to whom,
- a mixture of scepticism and suspicion in Whitehall over the capabilities of local government,
- public hostility to variations in service that would occur as a result of local level discretion over core services, and
- a media culture that holds central government accountable for all public services.

(IPPR & PwC, 2009)

Morphet (2008) cites Whitehall's scepticism as 'elite contempt' of local government. IPPR argues that it is the focus on central accountability, which is the biggest barrier to greater localism as "they [politicians and policy-makers] are being blamed for things which they no longer have control over" (IPPR, 2009: p.5). Whether IPPR's (2009) conclusion is accurate or not, it illustrates the potential political pitfalls to greater localism. This conclusion is in-part echoed by Bunt and Harris, citing that "government has traditionally found it difficult to support genuine local solutions while achieving national impact and scale" (Bunt and Harris, 2010: p.3). Atkinson and Wilks-Heeg reinforced the requirement for local government to act to solve radical social challenges, stating that "local circumstances often require local solutions" (Atkinson and Wilks-Heeg, 2000: p.270).

Bunt and Harris (2010) propose a solution to the disjunction, offering an approach called 'mass localism'. As a method of combining local action with national scale, Bunt and Harris offer 'mass localism' as a practical solution by a different kind of approach that combines local action with national scale that "policy-makers should create more opportunities for communities to develop and deliver their own solutions and to learn from each other" (Bunt and Harris, 2010: p.5). However, Bunt and Harris' (2010) 'mass localism' presents

difficulties in that a solely bottom-up or locally driven approach risks creating geographical differences between local government services or 'post-code lotteries'. Pratchett acknowledges the inherent risk, stating that "central government has a primary role to play in ensuring territorial justice ... the centre can be expected to emphasise particular policy outcomes and to focus attention on particular priorities" (Pratchett, 2004: p.369). Walker further reinforces the concerns about differences in levels of service stating that "along with local differences, go inequality, under provision of vital services and capriciousness in their deliver" (Walker, 2002: p.2). New Localism itself would not directly cause greater inequality but through variation in local services greater variation in outcomes might occur. Walker (2002) moves beyond the role for central government that Pratchett (2004) outlines, and argues that local differentiation will 'exacerbate variation and inequality'.

Morphet acknowledges the inherent tensions between "local discretion and a post-code lottery" (Morphet, 2008: p.98), citing that this tension is only amplified by the centralised nature of governance in Britain but highlighting the extent to which a 'principle of universality' can be maintained by the adoption of basic standards or 'floor targets'. This echoes Pratchett's (2004) theory on the role of central government in ensuring territorial justice and to an extent the adoption of performance metrics. Milliband argued in favour of devolution of power beyond local government calling for a "double devolution of power from central government to local government, and then from local government to citizens and communities" (Milliband, 2006).

### *Localism beyond local government*

Morphet (2008) highlights the argument that the best way to achieve New Localism is to enhance the existing powers and embolden the existing structures of 'local government and, town and parish councils'. However, this also highlights the alternate point of view, which is based on the presumption that "local government does not provide the right skills and immediacy for local engagement in local service delivery" (Morphet, 2008: p.129). Morphet (2008)

terms this contrary view 'central localism'; whereas Miliband (2006) refers to it as 'double devolution', from central to local government and from local to communities, or hyper-localism. King and Stoker cite that there is a third tier in British government, that of "the parish or community council" (King and Stoker, 1991: p.55).

Although there is little contemporary academic research into the role of third tier or sub-principal authorities in Britain; tertiary authorities or town and parish councils "must not be overlooked" (Wilson and Game, 2006: p.81). The 1997 Local Government and Rating Act enabled residents to petition their local authority for the establishment of a parish council in their area, and by 2002 over 107 new parish councils have been created (Bevan, 2003). By 2003, there were approximately 8700 parish councils in England (Morphet, 2008). Leach and Percy-Smith summarise the problematic nature of parish councils as "parish councils may have plenty of legitimacy but very little real authority" (Leach and Percy-Smith, 2001: p.142), making an important distinction between legitimacy and authority.

"They are the ultimate form of decentralisation, because services or powers are devolved to legally independent bodies, thereby avoiding much of the conflict of interest which makes decentralisation half-hearted within a single organisation"

(Coulson, 1999: p.115)

Parish councils' usual functions are usually to maintain open spaces and common, church yards and community halls, and offer advice to principal authorities on local planning matters. However some tertiary authorities are extending services into other areas such as preservation schemes, providing off-street parking and employing neighbourhood cleaners (King and Stoker, 1991; Leach and Percy-Smith, 2001; NALC, 2009). Wilson and Game (2006) highlight that most of these functions are discretionary; only the consultation on planning matters function is statutorily required. As such, parish councils are still within the ultra vires framework, and as such have little discretionary power and funding.

“the most dynamic local councils deliver a wide range of services, sometimes as contractors, more commonly under a little known clause (section 101) of the 1972 Local Government Act , which allows a council to arrange a discharge of any of its functions by any other local authority. This has the advantage of enabling local councils to enhance (or reduce) the quality of the services provided, grass cutting for example, or more frequent disposal of litter than the district or county contractor might have carried out.”

(Coulson, 1999: p.116)

#### Tertiary authorities: a neglected opportunity

The 2007 Local Government and Public Involvement in Health Act extended the PoWB to Parish Councils (DCLG, 2009). From ‘Quality councils’ status, which allowed parish or town councils roles including extended responsibilities and functions, the extension of the PoWB to tertiary authorities aimed at creating ‘enabling councils’. This was aimed to encourage tertiary authorities to move away from the previous necessarily cautious approach towards a more innovative approach to community governance (DCLG, 2009).

The 2007 Act, however, created four caveats for the use of the Power by Parish Councils (DCLG, 2009). The 2007 Act also attached the same prohibitions to the Power as those attached for Principal Authorities. It also made previous discretionary legislation (i.e. s137 of the 1972 Local Government Act) redundant. Tertiary authorities operate solely upon the locally raised precept to fund discretionary activity. Morphet (2008) highlights that, should central government wish to fund town or parish councils in the future, new legislation would be required.

Although Leach and Percy-Smith (2001) distinguish between legitimacy and authority, no such distinction about either the personal abilities of councillors or of the collective ability of Parishes themselves is made. Whilst the (legal) authority of the Parish Councils has been enhanced by the extension of the PoWB, albeit with some fairly severe caveats, the (financial) ability of the council to act as innovative community leaders remains delicate.

Tertiary authorities' usage of the PoWB still has the same vulnerabilities as principal authorities uses of the PoWB as the PoWB "cannot be used to raise money ... nor can it be used to circumvent prohibitions, restrictions or limitations" (DCLG, 2009: p.4). Thereby the ability of the PoWB to act as a tool to introduce innovation to tertiary authorities is reduced. The PoWB, as a discretionary tool, was further reduced by the pre-conditions required from tertiary authorities under the Quality Councils status. The caveats and pre-conditions on tertiary authorities' use of the PoWB will be fully discussed in chapter 3.

### *Innovation and Agile Government*

Walker highlights that "innovation has been promoted by governments around the world as a key tool to improve public services" (Walker, 2006: p.311). After the 'power politics' (Stoker, 1999) of the previous Conservative Administrations that was often suspicious of local government, the New Labour Government's key public service reform aim was to foster innovation in all public service arenas because innovation improves efficiency (Mulgan and Albury, 2003).

The New Labour administration wanted to foster innovation in local government in order to reduce bureaucracy and modernise the public sector, which was part of the LGMA. One main aspect of that was to create a power of first resort for local government that authorities could regard as a license to offer creative and innovative solutions to local problems – the PoWB. Mason and McMahon state that "freedom for public services would enable professionals to provide better, more responsive and more innovative public services" (Mason and McMahon, 2008: p.7). Barrow, Greenhalgh and Lister submit that "local government faces four main barriers to providing public services that deliver value for money to local residents: the command state, the inspection industry, service silos and financial dependency" (Barrow, Greenhalgh and Lister, 2010: p.2). Barrow, Greenhalgh and Lister (2010) maintain that these barriers have prevented local government from producing innovative local services to social challenges.

## Strategic local government

In 2004, the New Labour Government commissioned Sir Michael Lyons to consider the future role and function of local government in the UK. The Lyons Inquiry (2005) recommends for a greater strategic or 'place-shaping' role for local government echoed the conclusions of an earlier review into local government – the 1976 Layfield Commission. Morphet (2008) cites that the actual delivery of New Localism was rebranded by the Lyons Inquiry, and replaced with the greater place-shaping role. One of the key issues at the heart of the Lyons Inquiry was the requirement to strike a balance between immediate improvements to public services and efficiencies, and the necessary longer term investments for future prosperity. Lyons concluded that the relationship between the centre and the locality must be redressed to help contribute to wider national objectives (Lyons, 2007). Both sets of recommendations advocated a broad localist position; Lyons cited "the pressing need to inspire a sense of powerfulness in local government" (Lyons, 2007: p.ii). Although Lyons (2007) did not discuss the need for greater innovation in the public sector, the Inquiry report stresses the need for 'lean and efficient working practices' i.e. a more agile form of local government.

Walker cites that "innovation is complex and contested" (Walker, 2006: p.311). Pickles implies that local government has been lacking in ambition, recently stating that the Coalition Government's policy programme is designed to "encourage communities to step up to the plate" (Pickles, 2010). Lyons cites that "the challenge is to strike the right balance" (Lyons, 2007: p.12). An off-balance approach runs the risk of either over-emphasising the importance of frameworks that work in every area so the whole sector must travel at the same pace as the slowest component, or over-experimentation which runs the risk that many local authority areas spend time reinventing new approaches and therefore wasting officer time and further resources.

Lyons' conclusions on the route to greater innovation in local government follows the broadly localist perspective throughout the Inquiry

recommendations, citing that “central government should not routinely issue guidance on innovation – rather the family of local government should take more of the responsibility for this ... providing information and good practice” (Lyons, 2007: p.12) as further central prescription could in effect reduce local innovation. However, Walker cites that “theory and empirical evidence suggests innovation adoption is likely to be mediated by the external context within which an organisation sits” (Walker, 2006: p.314).

Innovation in local government: mismatched requirements and capabilities?

Nesta reflected on innovation in local government with regard to future organisational challenges and questions whether “local government has the right attitude and skills for the difficult times ahead? Is the sector ready to face new demands with the energy and determination that will be required?” (Nesta, 2010: p.15). The report further highlights that there are a “well documented set of barriers within local government” despite the history of innovative municipal government, and that innovation is sometimes a ‘happy accident’ that is the result of individuals “who don’t take no as an answer” (Nesta, 2010: p. 15). This statement raises the question of whether this is the case with the low use of the PoWB. Is the low usage of the PoWB the result of the majority of local authorities’ officers interpreting the PoWB cautiously? For those authorities that have proactively used the PoWB, has their use been driven by ambitious officers or elected members?

This suggests that innovation is not completely divorced from external pressures. In some cases external challenges may be the cause of the adoption of innovative practice. Schumpeter’s (1950) argument that economic uncertainty provides the opportunity for innovation clearly links externalities with innovation. IPPR argues that “the 2008 financial crash demonstrated with devastating effect serious flaws in the UK’s economic model” (IPPR, 2010: p.5), arguing for the importance of innovation. IPPR argues that “contemporary economic policy-making needs to be centred on three core principles: it must be innovation-centred, pragmatic and aware” (IPPR, 2010: p.7), and these are

almost identical characteristics to those required by 'agile' governments (Demos, 2008).

This thesis highlights examples of innovative practice in local government from reopening closed Post Offices in Essex to enhancing the emotional resilience of school children in South Tyneside. The LGiD and NEF (2010) highlights that "as the UK lurched from a banking crisis into a full blown recession, Essex [County Council] and its partners recognised the need to act quickly and effectively" (LGiD and NEF, 2010, p.35). Essex County Council launched a range of policy interventions to combat the effects of the recession, the measures included:

- Providing financial assistance to economically vulnerable residents,
- Increasing the capacity of local credit unions,
- Increased its programme of reopening closed post offices, and
- Launching the Banking on Essex initiative, which provides loans to businesses.

(LGiD and nef, 2010, p.35)

The examples cited by the LGiD and nef (2010) therefore highlight the importance of external challenges. However, external challenge would only present the catalyst to local innovation. One result of ongoing reduction in public expenditure is local government facing calls for greater – more radical – innovation.

Blond summarises that scale of the challenge facing the public sector in the UK saying "not only must they contend with ever increasing public expectations and societal challenges such as an ageing population, but they must do this in the face of the biggest shock to public finances in living memory" (Blond, 2009: p.5). The extent of the reduction in public expenditure and combined with the nature of the challenge has promoted commentators to say that 'salami-slicing' or shaving savings off existing budgets will not achieve the level of savings that are needed (Butler, 2010; Taylor, 2010). Mason and McMahon (2008) state that with fewer regulatory requirements and lower levels of bureaucracy, a reduction of £15 billion a year in government spending could be achieved with



no loss of front-line services. Whereas Blond proposes that “empowering frontline staff to drive service improvement can result in very significant savings, in the order of 20-40 per cent” (Blond, 2009: p.6). To foster greater innovation in local government, central government needs to provide greater legal, financial and bureaucratic freedom. Lyons also emphasised the importance of central-local coordination to improve local freedom, stating:

“improving local accountability and governance rely to a large degree on local government changing its behaviours. Central government needs to design a framework which encourages and enables local authorities to take responsibility for how their communities are governed, and to design, and demonstrate the value of governance structures which work for their locality. No single model will work everywhere and too much central prescription could result in inappropriate local solutions and reduced innovation.”

(Lyons, 2007: p.7)

Can the reduction in public sector expenditure and the tightening fiscal environment act as a sufficient catalyst to engender radical innovation and inspire Lyons’ (2007) ‘sense of powerfulness’ and ambition? Nesta questions whether “local government has the right attitude and skills for the difficult times ahead? (Nesta, 2010: p.15). Demos (2008) highlight the importance (and potential) of agile government, citing a case study of a private company that was facing bankruptcy, inefficiencies, low productivity and low employee morale and ten years later the company had grown by over 900 per cent. Demos (2008) emphasise the importance of agility by showing that agility offers government the ability to meet external challenges and respond to an increasingly ‘uncertain global environment’. Agile government is defined as “understanding and meeting the needs of the citizens in the short term, adapting structures and services to address medium term trends, and shaping needs in the long term” (Demos, 2008: p.1). In practical terms, for public sector organisations agility means:

- Short term frontline responsiveness,
- Strategic adaptation,
- Outcome focus, and
- Preventing or reducing problems before they arise.

(Demos, 2008: p.5)

Board (2010), using the same example as the Demos (2008) research, emphasises the importance of leadership in fostering innovation. Walker reinforces the significance for innovation adoption, stating that “the role of leaders in organizations is important” (Walker, 2006: p.315) but also acknowledges that innovation “needs to be understood as a complex and heterogeneous management strategy in public organisation” (Walker, 2006: p.330). Leadership plays a decisive role in creating agile organisations. Agile governance offers a more practical route to achieve innovation in public services.

#### Innovation and Organisational Agility

Demos cite that “innovation is a key aspect of agility because it implies a willingness to explore a variety of different approaches to find out what works. It entails constantly developing the capacity of government to meet citizen needs” (Demos, 2008: p.23). It acknowledges that “governments cannot become agile overnight” (Demos, 2008: p.23). Bunt and Harris surmise that “it is not enough to assume that scaling back government bureaucracy and control will allow local innovation to flourish (Bunt and Harris, 2010: p.5). Walker (2006) summarises the factors important in fostering (and facilitating) innovation in local government as the politics, the people and the partnerships involved in the process. Demos reinforce the importance of people and partnerships in fostering innovation and achieving agility, as promoting collaborative working citing:

“Finland’s central government wanted to become more problem-focussed, it rejected structural change in favour of creating policy making networks of ministers and civil servants that work across departmental boundaries to deliver outcome goals”

(Demos, 2008: p.23)

However, structures and processes are only one part; a change in local authority culture and relationships are crucial in achieving innovation. Walker corroborates this finding citing that “the external political environment is

extremely important” (Walker, 2006: p.315). Demos (2008) and Board (2010) highlight that both leadership and the culture of an organisation is crucial in achieving agile government.

The NEF’s (2010) cite that “almost every local authority in the country has developed or piloted some new service” (Wilson and Game, 2006: p.41). Through sharing best practice and fostering cooperative learning, local government is often much more innovative than central government. This may be because some innovative projects are easier to deliver on a micro-scale or because of the scale of negotiation involved with some issues on a national level. Yet, this is not a new phenomenon. Nesta cites local government’s historical precedent as “ the glory days of municipal government in the late Victorian period saw the [local government] sector leading the way when it came to matters such as public health, gas and electricity provision, public parks and council housing” (Nesta, 2010: p.16).

Local government can embed innovation within the local community, fostering creativity and growing new methods of delivering services and enshrining entrepreneurialism in local authorities (Nesta, 2010). Furthermore Wilson and Game reflect that local authorities are engines of innovation that offer a limitless list of examples much more radical than those offered by central government (Wilson and Game, 2006). Wilson and Game (2000), therefore, contrast with Nesta (2010). Nesta highlights that “despite a long history of fostering innovations, there are a well-documented set of barriers within local government” (Nesta, 2010: p.15). Nesta also highlights that local government (as a sector) is breaking through institutional barriers citing that “the sector is already showing signs that the seeds of its new role in driving nationally relevant innovation have taken root” (Nesta, 2010: p.15). The success of innovation in local government, however, is dependent on relations between the centre and the local level.

Sullivan (2007) highlights that local government taking a role as innovative community leaders is not a new concept. Morphet highlights that the “mass of

separate targets between agencies has been one of the significant hurdles of joint working” (Morphet, 2008: p.41). Morphet (2008) also concedes that local authorities’ individual ability to work in partnership with other bodies and promote community leadership depends on local need and priority.

### *Well-being and the emergence of Active Localism*

Post 1997, a community leadership role has been reintroduced as part of the LGMA and some progress has been made in creating a more strategic agency role for local government, albeit at the cost of greater central control. The Local Government Association argued that active civic leadership was a key commitment for modern local government by working in partnership “to promote local well-being, social justice and social inclusion” (LGA, 1998: p.6). Pratchett (2004) highlights the Comprehensive Performance Assessment as an example of central control. One exception to the centralising tendencies of recent local government modernisation was the PoWB.

The PoWB enables local government to do anything they are not already able to do under the ultra vires framework. Although the PoWB is not legally a power of general competence it did technically loosen the legal constraints that held local authorities in place and granted local government a degree of autonomy (Wilson and Game, 2006). Sullivan defines community leadership as ‘the pursuit of community well-being through strategic interventions that would not otherwise have happened’ (Sullivan, 2007: p.143). The PoWB realised local government’s community leadership role and solidified their rediscovered role in legislation.

Whilst the measures contained within the Local Government Act 2000 may have signalled the emergence a New Localist agenda, scholars seek to clarify the notion of New Localism. This involves distinguishing between ‘new’ New Localists or ‘Active’ Localists and Old Localists (Wilson and Game, 2006). Perhaps this clarification should be expanded to cover legal duties offering local government greater autonomy? An alternative is Pratchett’s (2004) ‘freedom to’

distinction; the PoWB is the bedrock of Old Localism, whereas the future of Active Localism relies more heavily on a new Power of General Competence or a General Power of Competence. Old Localism is characterised by power relationships, formal structures of local governance and focuses on financial control. Active Localism accepts the role of central government in the power relationship and the freedoms acquired by local authorities (Pratchett and Leach, 2004; Wilson and Game, 2006). Active Localism argues that many of the problems facing the public sector cross formal boundaries of democratically elected institutions. A revision of the local governance structure may be required, with local authorities' assuming a facilitator role rather than the focal point in the network; due to their 'legitimacy' (Leach and Percy-Smith, 2001) and their practicality to respond to complex local governance challenges (Stoker, 2004). This is an approach, which reflects the relationship developed between local actors in Bristol (McMahon, 2002; Wilson and Game, 2006).

Whether or not the extent of future local government reforms will be seen as pervasive enough by some political scientists, politicians from all three major parties have made public statements that subscribe to a localist agenda (Wilson and Game, 2006; IPPR, 2009; House of Commons, 2009). However, what type of localism has become the norm? Many of the reforms of local government have represented the blunt edge of a centralising tendency; the PoWB represents a creative tool for local authorities to use with regard to policy making. Despite this new tool for local autonomy and creativity, the future role of local government remains (for the moment) uncertain.

Due to the 2008 financial crisis, and ensuing global recession, public finances have been strained and, as a result, the national deficit is at an all time high. With all the major parties talking about public sector spending cuts, centrally imposed tax increases and efficiencies throughout government, it remains to be seen whether any party will consider a structural reform of local government finance. If a similar level of resource allocation and the spending formula remains stable then perhaps greater legal freedom for local government would help foster a more widespread localist agenda. The 2010 Budget, however,

committed the Coalition Government to a vast programme of ongoing reduction in public expenditure, in order to reduce the scale of the deficit within the lifetime of one Parliament (HM Treasury, 2010).

The 2010 Budget radically renegotiated the local government funding settlement, Communities and Local Government Secretary, Eric Pickles stated that “it’s not about giving away money anymore; it’s about giving away power” (Pickles, 2010). Prior to the General Election, the Conservative Party published a draft Green Paper on localism. It discusses the nature of local freedom and committed the Conservative Party to introducing a new General Power of Confidence and a discretionary power to levy taxes to support the local community (Conservatives, 2009). The Coalition Government’s ‘manifesto’ committed the government to introducing a General Power of Competence and to promote a ‘radical devolution of power and greater financial autonomy to local government community groups’ (Cabinet Office, 2010).

Whether these actions would promote a new form of ‘Active’ Localism remains to be seen. Whilst there is a considerable amount legal speculation regarding the PoWB because of its initial lack-lustre take-up and the following Local Authorities Mutual Limited judgement, whether an un-tried General Power of Confidence would remove (or embolden) this uncertainty also remains questionable. Even so, some proactive local authorities have used the PoWB to pursue an ‘actively’ localist agenda. Although some local authorities that have used the PoWB and funded their projects through local area based grants, this activism has taken root regardless of the existing financial shackles placed upon local government. If this level of activism remains constant then an actively localist agenda may well spread further to other authorities, and the active leadership role (rather than partner) may become commonplace.

### *The Turn to Well-Being*

As highlighted earlier, the LGMA, and specifically the PoWB, was introduced to modernise local government. Through modernisation, central government

aimed to restore local government's confidence and empower authorities to engage in policy areas that had traditionally off limits; areas such as sustainability or well-being. When introduced, the PoWB itself was the tool that enabled local government to engage in extra-statutory policy areas (such as the promotion of general well-being). A growing debate, at the time of the introduction of the PoWB, was on sustainability and sustainable development (Dolan and Peasgood, 2006). However, this policy focus drifted and matured into a debate on general well-being.

The study of well-being in public policy and its implications for policy-making is an emerging area of interest (Bok, 2010). Well-being has been a growing issue in public policy over the last thirty years. It still remains, however, an evolutionary concept, and it is the latest in a series of policies that address social capital, resilience and social inclusion (Jordan, 2008). The importance of promoting 'well-being' has been increasingly acknowledged as a key aim of social, economic and environmental policy interventions (Bacon et al, 2010).

Bok also highlights that "the idea [of Gross National Happiness] has begun to catch the attention of other governments" (Bok, 2010, p.4). The Stiglitz Commission is a significant development in the debate on well-being. The Stiglitz Commission represents the first time that the Government of a major economic power has placed the promotion of well-being as a central goal of public policy. The report recommendations have since led President Sarkozy to propose ten 'happiness' indicators, which measure the progress of French society ranging from recycling to relationships and tax credits to traffic congestion (Stiglitz, Sen and Fitoussi, 2009).

In the UK in 2003, the Sustainable Development Commission began to explore how policies might change with an 'explicit well-being focus' (Dolan and Peasgood, 2006). In 2007, the Young Foundation began – in cooperation with central and local government, Professor Lord Layard and the Improvement and Development Agency (IDeA) – a three year research project to explore the practical examples of how local government can improve the well-being of local

people entitled the 'Local Wellbeing Project'. The initiative found that "wellbeing can be made a practical policy goal, both nationally and locally, and that it provides a very different way of thinking about changing needs to traditional approaches" (Bacon et al, 2010: p.7), offering contradictory findings to Johns and Ormerod (2007). Whilst there remains much uncertainty over the study of the concept and its practical elements (Diener et al, 2009), conceptually, well-being could be applied to a number of similar policy debates ranging from social capital to community cohesion (Layard 2005; Bacon et al, 2008). Nevertheless, this growth – in populism of well-being – has not been entirely unopposed.

The Coalition Government announced a review into developing a method of measuring people's psychological and environmental well-being, echoing the Stiglitz Commission (2009) report findings by wanting a 'combined well-being data set' to have a central role in national policy-making (Hoskin, 2010; Stratton, 2010b). The movement away from Gross Domestic Product (GDP) to an index of general well-being could prove to be the beginning of an international trend amongst developed economies.

Canada has begun to measure life satisfaction between the provinces and has found that the richer provinces are not generally happier (Stratton, 2010a), reiterating Easterlin's (1974) original finding. HM Treasury (2008), however, concluded that more research is needed, but that by necessity alone practical policies that promote local well-being need to be bottom-up in design and delivery. Whether the research into well-being now provides a critical mass is uncertain. Diener acknowledges the inherent difficulties in the use of well-being metrics as a criterion for success, and offers an alternative approach that would use "well-being measures to guide policy" (Diener, 2009: p.124) in a direction that would allow greater well-being to emerge.

There is, as yet, little debate on how local government well-being interventions have impacted at a community level and little comparison of usage of the PoWB across the English local authorities. This thesis will address this gap in the academic literature by carrying out a thorough examination of the capacity of



local authorities to promote well-being, and how their organisational capacity affects their take up of the PoWB. An examination of the relationship between well-being and the role of political institutions will help identify what role the local authority political leadership plays in promoting well-being in a local area, and exercising an authorities' autonomy. The PoWB enables such an examination.

Original research carried out as part of this thesis will explore the role of elected members as local leaders in the promotion of local well-being. Wolf raises an interesting point over the issue of what form of governance arrangements should underpin the development of well-being in policy by asking "should we accept the common view that the new science of happiness has cemented the superiority of Scandinavian social democracy over Anglo-Saxon liberalism ... the answer is no" (Wolf, 2007). Johns and Ormerod offer the conclusion that "it is clearly debateable whether government should presume responsibility for individuals' emotional states" (Johns and Ormerod, 2007: p.19). However, Aristotle treated the State as "one of the chief means through which the individual attains happiness" (Aristotle, 1905: p.3).

Since 1997, and the introduction of the PoWB, local authorities have increasingly adopted projects solely orientated towards promoting the well-being of local communities and residents. Rowell highlights examples of authority well-being projects:

- Bristol City Council's Quality of Life survey,
- Manchester City Council's Community Guardians,
- Nottingham City Council's work with younger people, and
- Thanet District Council's well-being audit of wards that led to the creation of their Safer Stronger Community Fund.

(Rowell, 2010: p.197)

The introduction of the PoWB marked the beginning of a trend that shifted the debate from an *implicit* focus on well-being to *explicit* well-being focus in policy and projects. Previously local authorities engaged in projects that would address a challenge or issue, which would also promote local well-being; the PoWB provided a shift in the debate and supported the emphasis on well-being

on the policy agenda. Despite its comparative limitations, “local government, because of its position on the ground, often has the potential to respond in a more effective way than far away central government” (Atkinson and Wilks-Heeg, 2000: p270). Therefore, the gradual shift – emboldened by the introduction of the PoWB – also presents a fundamental change. The gradual shift towards the emphasis on well-being began under Local Agenda 21 (LA21). Even though LA21 began as a global initiative, local authorities responded to the challenge by seeking new opportunities. Whilst this could be taken as a demonstration of the reality of multi-level governance and the ‘hollowing out of the nation-state (Atkinson and Wilks-Heeg, 2000; Jessop, 2004), a number of authorities exercised their autonomy by taking advantage of opportunities open to them.

Post-1997, the New Labour Government stated that greater autonomy would only be made available after substantial modernization (Atkinson and Wilks-Heeg, 2000). Local authorities saw what began under LA21 extended to include poverty, health and sustainable development. The Government Department with responsibility for well-being is DEFRA and this is evidence of a gradual policy drift – and perhaps the advantage of local over central government responsiveness. The PoWB, however, marks the first *explicit* move to focus on well-being.

Prior to this change, local authorities did not explicitly act to promote well-being. Although implicit action was taken, and projects engaged into, the promotion of local well-being was not the ultimate objective. This gradual shift towards well-being, has been mirrored by a burgeoning academic literature on well-being and the determinants of well-being.

### *Conclusion*

One of the longest standing debates in central-local government relations over the last century “has been the extent to which its dependency on specific legal powers erodes local government’s role in delivery and its ability to lead and

serve its communities” (Morphet, 2008, p.37). However, an equally – if not more – important debate relates to funding and local government finance.

Morphet acknowledges that the year 2000 acted as a ‘watershed’ in the drive for greater localism. Yet the PoWB, which was supposed to act as a power of first resort for local government (DCLG, 2008b; INLOGOV, 2008), has only been used by 15% of local authorities (Williams, 2010). Did the PoWB act as intended or do local government officers still consider the role of powers in the traditional manner? Furthermore, the gradual policy drift and growth of well-being represent a fundamental shift in relations between central government and local authorities. The mirrored modernisation of local government and development of well-being policies – both epitomised by the introduction of the PoWB – mark a new branch of debate.

Morphet highlights that the “changes in local government have not attracted as much interest as other areas [of constitutional reform] and have remained unsung” (Morphet, 2008: p.36). The counter argument that local authorities have a great degree of freedom within the existing legal constraints may account for the differing level of performance, the financial and political freedom that exists in local government in the UK remains to be seen.

Although some local authorities’ limited ambition and autonomy may be the result of combative relations during the 1980s, and therefore lack of confidence, the view that local government was New Labour’s achilles heel led to tighter control of local authorities through “the rigid application of targets and spending direction, with far fewer degrees of local freedom” (Morphet, 2008: p.38) may have further exacerbated the problem. While different scholars summarise the model of inter-governmental relationship in different ways, from a ‘complex game’ (Rhodes, 1981) to a ‘swinging pendulum’ (House of Commons, 2009), it could be correct to assume that “local authorities wanted to have their power restored and then to be left alone” (Morphet, 2008: p.11).

In addition to over two hundred Acts of Parliament between 1979 and 1997, since 1997, 28 Acts of Parliament have directly affect District Councils alone (Mason and McMahon, 2008). Even though relations between central and local government are much more consensual than during relations during the 1908s, offering a simple left versus right analogy would seem to be overly simplistic (Walker, 2000; Blond, 2009).

Since 1997, New Labour sought to res-establish local government's community leadership role to allow a renaissance of innovative municipal government as part of the LGMA (Sullivan, 2007). The interpretation of the vires framework dictates the ability of local government to respond to external challenges, particularly with regard to spending. Post 1997 successive legislation has increased the degree of local government's legal discretionary ability (Morphet, 2008). The challenge is for ambitious local authorities to recognise and capitalise upon opportunities created by these 'implied powers' (DCA, 2003; Morphet, 2008). The Coalition Government seems to be attempting to address this challenge by "encouraging communities to step up to the plate" (Pickles, 2010) and embracing the previously championed 'localism beyond local government' (Milliband, 2006).

### **Chapter 3 - Local Well-Being: the Policy context**

This chapter will offer an insight into the policy context from which the PoWB emerged by highlighting the history of local government since 1997 and by providing contemporary evidence on the PoWB. The contemporary evidence will assist later in creating a basis for a typology of local authorities. It will provide examples of well-being policies in local, national and international political arenas.

#### *Understanding well-being: the policy context*

McMahon (2002) offers one example of local bottom-up design and delivery by a local partnership in Bristol to develop a range of Quality of Life indicators. The indicators began as a measurement of sustainability but were developed into a broader range of 'traffic light' well-being indicators. While the indicators were initially designed to measure sustainable development, the purpose eventually drifted towards a more holistic Quality of Life indicator set. These were composed of over 60 indicators such as unemployment, local pollution, absence from local school and levels of deprivation.

Bristol's indicators have informed local people about the quality of life in their area, which has led to "political, community or individual action for change" (McMahon, 2002: p.177). McMahon's (2002) research aligns with HM Treasury's (2008) conclusion that viable policies need to be more composite. Although the measurement of indicators started as a top-down initiative, it was acknowledged that bottom-up indicators provide a more valuable insight. The two approaches were developed into a single cohesive indicator set using information from European, national, regional, local levels and community groups to piece together a "multi-sectoral approach that strengthens partnerships with other agencies" (McMahon, 2002: p.185). Aside from McMahon (2002) and Bacon et al (2010), work on well-being in local policy and the community there is little other research – and very little original academic research on the subject.

Layard (2005) cites that just six factors account for 80% of the variation in reported subjective well-being; divorce, unemployment, belief in God, quality of government, membership of non-religious organisations, and the level of trust felt within a society. Obviously, policy-makers cannot target public policies against all of these six factors; it can however target some of them to reduce the variation of subjective well-being in the population. However, how can well-being (as a policy agenda) be understood and how can policies be developed to improve people's well-being in the wider political context that now includes the Big Society.

McMahon's (2002) research found that a partnership approach between the local authority and local community groups offered a stronger approach to the development of the local indicators. By fostering an enabling approach to community governance, local government could take the lead in the Big Society by developing policies to promote local well-being. In many local authorities, an enabling approach may already be in place but often not in relation to promoting local well-being.

By adopting an enabling approach to the promotion of local well-being, this approach would utilise McMahon's (2002) partnership experience and allow a greater unfettered approach to promoting well-being. Whilst national government focuses policy on achieving macro level goals that would prevent negative well-being (i.e. reducing unemployment and working to enhance the quality of government), local government and community groups could work together to reduce any barriers to greater well-being by tailoring local policies that could achieve the piecemeal bottom-up approach that HM Treasury (2008) outlined.

In the face of reduced public expenditure and a shrinking role for the government, the Big Society represents an opportunity for local government and community organisations to step forward and seize the opportunity to emphasise the importance of promoting local well-being. Bacon et al

acknowledge that this focus is “particularly important during periods of recession and recovery” (Bacon et al, 2010: p.86). When localism and well-being metrics are matched as policy priorities of the Coalition Government, and when local government must pursue a radically different approach to community governance to meet the growing demands with fewer resources, the Big Society represents a potential route to giving an additional impetus to the goal of greater well-being. This would be in line with the Coalition Government’s desire that well-being has a central role in policy-making (Hoskin, 2010; Stratton, 2010b).

However, Hatter (2010) also concedes that the limitations of a well-being or happiness metric as a gauge for public policy ‘need to be recognised’. At present, there is severely limited coverage of the political institutions and policy-makers; institutions and actors that shape public policy and can promote well-being. There has been little academic research into the role of local authorities in explicitly promote well-being through their statutory discretionary powers (Section 2 of the Local Government Act 2000 – the PoWB).

Where the existing research into the use of the PoWB has focussed on the prevalence of the uses of PoWB, this thesis will attempt to gauge which factors have inhibited or facilitated local authorities’ use of the PoWB. This research will be framed in a contemporary evidence base to establish how widespread the use of the PoWB has been. This research on the PoWB will then be used to explore the appropriateness of developing a conceptual typology of local government to define different innovative types of local authority. Furthermore, this research may offer insights that could impact on local authorities’ adoption of a General Power of Competence (GPC), especially given the potential for comparison between the PoWB and the GPC (HoC Deb 17 Jan 2011 c561).

This review will aim to fill a gap in the literature by reporting upon recent research that locates the use of the PoWB within the broader debates on local government autonomy. In light of the Coalition Government’s intended development of a General Power of Competence (GPC) for local authorities,

this original research will highlight lessons that could encourage further innovation in local government.

*The Power of Well-Being: the context*

The Local Government Act 2000 established a duty for local authorities to develop a comprehensive strategy to promote the 'well-being of local residents, the area and those people present in it' (Great Britain. Local Government Act 2000: sc.4). It also contained legal authority for local authorities to do so – the PoWB (Great Britain. Local Government Act 2000: sc.2). The PoWB is "part of a range of tools which help local authorities to exercise their role as strategic leaders of their communities" (DCLG, 2008b: p.2). The origin of the PoWB lies in the 1997 Labour general election manifesto, which stated that local government should be less constrained by central government (The Labour Party, 1997); the intention was that it would restore local government's self-confidence.

However, there are significant limitations on the adoption of the PoWB. The limitations of the PoWB were outlined earlier in this thesis in chapter one. Of the limitations placed on the Power, the inability to raise capital or revenue and the requirement to demonstrate use of the PoWB are particularly relevant.

"Departmental officials told us that the well-being power was one of the most important parts of the Act yet they have difficulty in providing specific uses of the power in the sense of pointing to concrete examples of things being done which could not previously have been done."  
(HoC, 2002)

These limitations were placed on all local authorities (principal and tertiary tier), however additional restrictions were placed on tertiary authorities. The additional tertiary tier restrictions will be outlined in detail later in this thesis. The limitations stipulate that any project that uses the PoWB has to be financed by existing local authority funding or central government grant. The LGA (2003) stipulates that "given these limitations, it is not always a simple question to determine whether a specific proposition can be pursued by a council under the



well-being power. Financial issues are a particular area of uncertainty” (LGA, 2008, p.3). The Local Government Act (2003), however, provided local authorities with powers on borrowing, trading and charging (Great Britain. Local Government Act 2003).

This enabled local authorities to begin charging for discretionary services, reinforcing an earlier pre-existing power (Great Britain. Local Authorities (Goods and Services) Act 2007), and to trade on a ‘commercial basis’ (Great Britain. Local Government Act 2003: sc.93). A later clause in the 2003 Act placed a potential limitation on the ability to trade. Section 94 allows the Secretary of State to revoke Section 93 wherever appropriate (Great Britain. Local Government Act 2003 :sc.94). Wilson and Game (2006) highlight a similar aspect that could affect usage of the PoWB in that it is subject to ministerial interpretation. This recurrent element of central oversight over local government power may prove to be a significant contributing factor in the limited use of the PoWB.

Whilst Section 94 of the 2003 Act (Great Britain. Local Government Act 2003) allows for an element of central government control over the level of charging for discretionary services that could affect legal officers’ input, in conjunction with the PoWB, local authorities are now permitted to borrow and charge (on a non-profit basis) for services. For the first three years since the inception of the PoWB, discretionary finance was unavailable. The Local Government Act (2000), furthermore, abolished a previous discretionary finance clause - Section 137 of the 1972 Local Government Act, which allowed local authorities to “incur expenditure for certain purposes not otherwise authorised” (Great Britain. Local Government Act 1972: sc137).

“section 137 of the Local Government Act 1972, as amended by Schedule 2 of the Local Government and Housing Act 1989, provides a local authority with the power to spend a limited amount on activities for which it has no specific powers, but which the authorities considers ‘will bring direct benefit to the area, or any part of it or all or some of its inhabitants’”.

(Ellwood, Tricker and Waterston, 2000: p.8)

The 1972 Act's discretionary finance clause was also limited on a per capita basis of how much local authorities could spend and was recognised of 'limited value' given the restrictions; however its usage was extremely widespread. The discretionary spending (or charging) limit for tertiary authorities is £3.50 per local government elector (Ellwood, Tricker and Waterston, 2000). Whilst this figure represents a modest limit, the population served by tertiary authorities can differ tremendously from under 100 to 30,000. Therefore, the maximum discretionary finance available (under the limit) to a tertiary authority would be £105,000. For the lowest tier of local government in England, this amount – whilst not comparable to principal tier authorities' budgets – could represent a significant discretionary budget. ODPM found that "92% of local authorities used s137 ... average use was 31% of the available financial limit" (ODPM, 1999, p.1).

Figure 4: Use of s137 in 1996/97 by type of local authority

Section 137 spend as a % of the limit	Counties	Mets	London	Unitaries	Districts	All authorities
Over 90%	0%	4%	8%	14%	7%	6%
76% to 90%	3%	0%	4%	9%	11%	9%
51 to 75%	6%	11%	19%	45%	26%	23%
31 to 50%	25%	14%	8%	23%	20%	19%
11 to 30%	25%	18%	38%	5%	20%	21%
1 to 10%	22%	39%	19%	4%	10%	14%
0%	19%	14%	4%	0%	6%	8%
Base (no of authorities)	32	28	26	22	192	300
Average s137 spend as a % of the limit	21%	19%	33%	56%	45%	31%

(ODPM, 1999)

Whilst 73% of respondents' s137 expenditure took the form of grants to voluntary and community organisations (e.g. Citizen's Advice Bureau, a social enterprise or charity), a minority of respondents reported using s137 expenditure to support economic development, planning issues, and crime prevention (ODPM, 1999). Although s137 was perceived to be an ancillary power or a power of last resort by local authorities, only 23% of local authorities

stated they would favour changes to s137 with the majority holding a strong view that s137 offered essential flexibility within the vires framework (ODPM, 1999). Furthermore, a small minority of local authorities actually felt that s137 emphasised the promotion of well-being of their areas and the residents (ODPM, 1999). Therefore the removal of s137 (and thereby the ability to provide discretionary finance) reduced local authorities' abilities to engage in extra-statutory services and their operational autonomy.

Ellwood, Tricker and Waterston (2000) offer an analysis of the use of s137, by tertiary tier authorities (parish and town councils). Ellwood, Tricker and Waterston highlight that whilst the Local Government White Paper (DETR, 1998) offered local authorities greater discretionary power (the PoWB), it did not extend that power to tertiary authorities, which would "continue to rely on s.137 to spend money on activities outside their specific power" (Ellwood, Tricker and Waterston, 2000: p.7).

Importantly, the two most common changes suggested by local authorities to encourage discretionary activity or community activism were the replacement of the s137 power with a general power of competence and the removal of the financial limits placed on discretionary activity (ODPM, 1999). These two proposed changes have significant impact on the PoWB and, its successor. Prior to the creation of the PoWB, ODPM offered an important consideration offering that:

"it is important for the proposed new duty to focus on the 'how' as well as the 'what' of promoting the economic, social and environmental well-being of their areas"

(ODPM, 1999: p.7).

The 'how' aspect of the consideration (i.e. exactly how authorities can promote well-being) may have contributed, albeit in a minor way, to the prevalence (or absence) of the use of the PoWB. This is, in part, to the conceptual difficulties in establishing 'how' to promote people's well-being and the limited availability

of examples of operational methods which local authorities have engaged to promote local well-being.

Initial research conducted between 2003 and 2007 into the practical perspectives of the PoWB concluded that, “there is still a relatively low level of knowledge and understanding of the Power amongst important stakeholders at local, regional and central levels” (INLOGOV, 2008: p.4) and that “councils are not fully aware of the opportunities provided by the Power to improve well-being” (DCLG, 2008b: p.1).

This initial research may have highlighted a broader theme within local government, specifically that local authorities have more discretionary power than they are fully aware of. Through the PoWB, used in combination with the Local Government Act 2003, local authorities could engage in any project to enhance the well-being of the local people. Moreover, the NLGN (2010) highlights that the Local Government Act (2003) is also overshadowed by an element of uncertainty – due to oversight and prescription from central government. This burden is in addition to Section 94 mentioned previously.

Alternatively, by using the PoWB, combined with the European Trade Act 2004, a local authority could stipulate that suppliers must source produce from the local area (Rowell, 2010). Whilst this action might not represent Best Value, it could well promote the economic well-being and future sustainability of local businesses. Such an action would require a significant level of political and managerial commitment within the local authority.

The ‘low level of knowledge and understanding’ (INLOGOV, 2008) could be the result of lack of training and awareness of the PoWB, and what it enables. Indeed local authorities’ lack of awareness of the ‘opportunities provided’ may be a similar result of lack of training, but part a wider picture regarding a lack of ambition in some local authorities. This lack of ambition could be the result of the changing objectives for local government, but similarly could be rooted

deeper in the more combative era of intergovernmental relations during the 1980s.

Despite this critical initial review (INLOGOV, 2008; DCLG, 2008b), there has been little further investigation as to why the take-up of the PoWB has been problematic and usage has been so limited. The remainder of this chapter will draw upon an initial scoping study (that took the form of a postal survey) that was undertaken to identify the common factors which encourage (or inhibit) local authorities to use their power to promote well-being, and attitudes to the PoWB and its potential replacement – a General Power of Competence.

#### *The Power of Well-Being: a Scoping Study*

The study took the form of a postal survey to all the English local authorities<sup>2</sup>. The initial finding of the survey was that 50% of local authorities responding have *so far* used the PoWB. This result is a much higher figure than suggested in existing literature.

The remainder of this chapter will examine a number of key characteristics of the local authorities that have used the PoWB, including local authority structures, party control, level of knowledge of the PoWB, and the relevance of the policy area that the PoWB was predominantly used in.

#### *Local Authority Structures*

The majority of responses (64%) were received from District Councils (see Figure 5). One inference that could be drawn from the data is that district

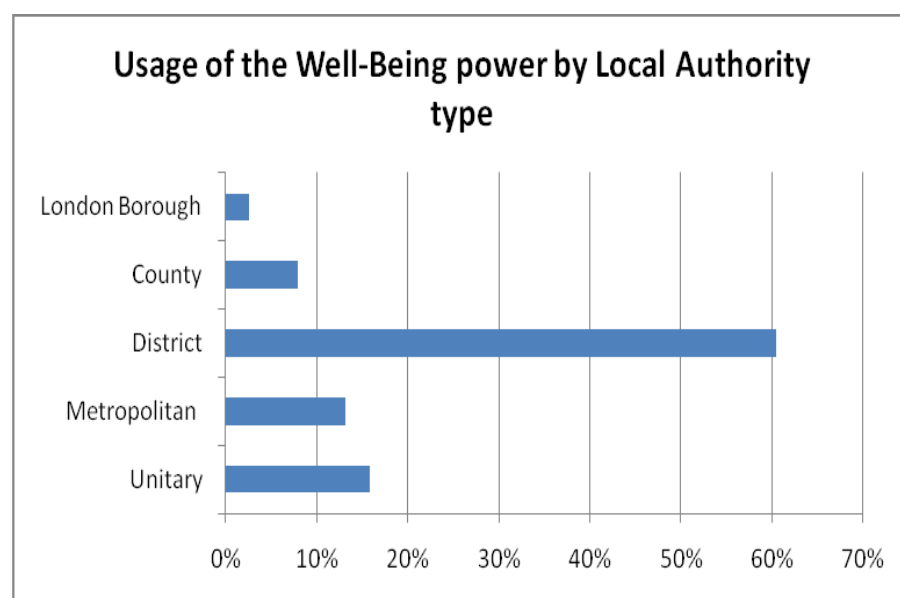
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<sup>2</sup> Methodological Footnote: The study outlined in this paper took the form of a postal survey, which was sent to all Local Authority Chief Executives in England. The study period lasted from September-December 2009. A quarter of those sent out were returned. Those responses provided evidence of senior local government officers' views of the PoWB, both as a method for promoting well-being and as a route to pursue innovative policy-making in their local authority. Given the character of the PoWB and the differing nature of the devolved administrations, the study was limited to local authorities in England.

councils are particularly likely to use the PoWB because their limited range of functions (compared to upper tier councils) ensures that they more likely to look for more creative interpretations of their role, particularly as it relates to engaging with local communities over local issues.

Alternatively, another inference could be that because District Councils are smaller organisations, which therefore have smaller departments with fewer staff, they adopted the PoWB to use as a broad enabling power. While most of the high profile examples of uses of the Power have tended to come from larger unitary councils, rather than from district councils, this may reflect those specific organisations having greater influence, larger press relations departments or that the gains made in such projects were larger and therefore attracted more attention.

Figure 5 – Local Authorities: Structures.

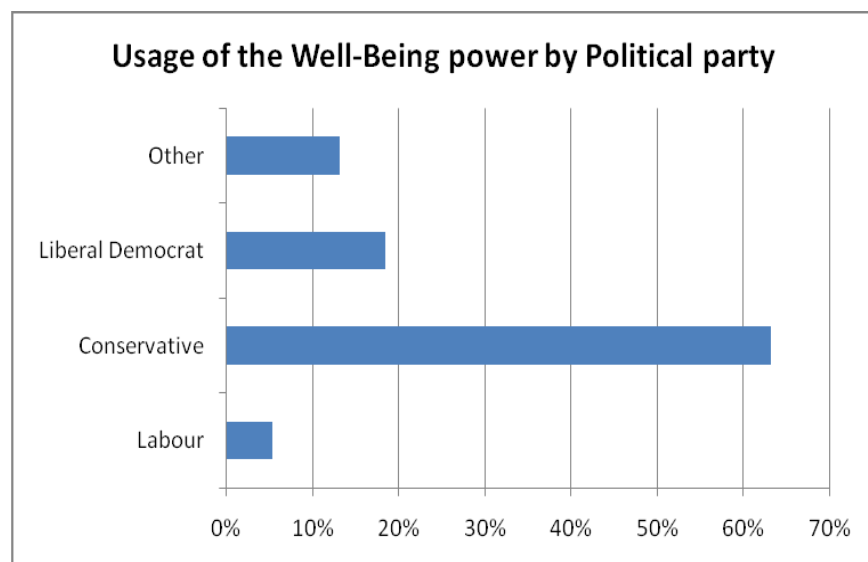


#### *Party Control*

Another trend emerging from the data (see Figure 6) was that the majority of responses that had used the Power came from local authorities that were controlled by Conservative majorities. This may be more reflective of the fact that the Conservative Party – at the time the survey was conducted

(September-December 2009) – held control over more local authorities than any other political party. However, well-being may not be a partisan issue, given the differences in community leadership between local authorities controlled by the same political party. Essex County Council and Barnet Borough Council are both controlled by Conservative majorities yet are pursuing divergent policy agendas and attitudes towards local governance. Essex adopted an interventionist policy stance – working to prevent post office closures and reopening closed post offices as customer service centres (Swinford, 2008), whilst Barnet adopted a ‘no frills’ approach to community governance to ensure lower council tax for local residents (Moore, 2009; Booth, 2010).

Figure 6 – Local Authorities that used the Power defined by political party control.



One aspect of the survey casts doubt on whether or not party control of the local authority has a significant impact on whether or not to use the Power. When asked about the initial proponents of the use of the Power, the greatest majority of respondents reported that local authority officers initially suggested how to use the Power. This finding may be more reflective of local government officers' greater knowledge on aspects of policy rather than a specific determination on the role of councillors in the decision to promote local well-being. Equally so, this finding does (to an extent) remove partisan politics from the debate.

A strong trend in the survey data was the level of understanding of the PoWB - a higher proportion of respondents stated that understanding of the PoWB was 'broad', than thought that it was 'limited' (see Figure 7). Respondents felt that understanding of the PoWB was broader in local authorities than in central government (60% in local authorities compared with 56% in central government). This challenges the initial finding from the INLOGOV study; specifically on the low level of knowledge of the PoWB amongst key stakeholders (INLOGOV, 2008).

Figure 7 - Officers' Views on understanding of the Power.

	Broad ← Limited →			
a. In your local authority	22%	38%	33%	4%
b. In central government	13%	43%	20%	1%
c. In the Voluntary Community sector	32%	26%	4%	1%
d. In local public sector bodies e.g. Police, NHS	30%	29%	7%	1%

Another trend was the high level of understanding that respondents felt other agencies held of the PoWB – specifically 58% in voluntary organisations and 59% in local public sector bodies. This could be due to the level of interaction between local authorities and local organisations in relation to community governance.

A fundamental reason for this level of understanding could be the result of local governance arrangements between local authorities and other local partners e.g. a Local Strategic Partnership (LSP). Particularly if the promotion of well-being had been placed as a key strategic priority of the LSP, as in South Tyneside, then a higher level of understanding would be present. However, a DCLG (2007) evaluation of LSPs revealed that only 8% were making use of the PoWB (see Figure 8). This may not reflect the percentage of LSPs that were



using the Power as a secondary measure - nor does it cover other policies with the aim of promoting local well-being - this finding does raise the question of how exactly the well-being agenda is affected by cross partnership working in the local area. The Audit Commission argued that:

“the promotion of economic, social and environmental well-being was more likely to be successful where national and local priorities are fully aligned and where local partners achieve coherence in establishing their priorities and targets”

(Audit Commission, 2004: p.2).

The evidence so far would seem to suggest that where priorities are fully aligned between local partners then a higher level of commitment and understanding would be present in the LSP. The impact of this for research on well-being is that if the promotion of well-being were to be made a key priority by the LSP then there might be a greater chance of overall success, due to the larger number of institutions working towards the objective.

Figure 8 – Local Strategic Partnerships (LSPs) and the Power (Source: DCLG 2007)

		2004	2006
The LSP is aware of the Power	No. of positive responses	271	194
	% of all LSPs	89	92
The LSP has considered making use of the Power in pursuing its objectives.	No. of positive responses	53	40
	% of all LSPs	17	19
The LSP has made use of the Power in pursuing its objectives.	No. of positive responses	14	16
	% of all LSPs	8	8

Of the respondents that had not used the PoWB, some cited legal uncertainty regarding the extent of the PoWB as justification for inaction. One potential course of legal uncertainty referred to by respondents was the ruling against Local Authorities Mutual Limited (LAML), which ruled that the PoWB cannot be used solely to save money (Eaton, 2009).

LAML was established by a group of London local authorities to provide mutual insurance to realise efficiency savings, which would then be used to fund projects that would promote the well-being of communities in the local authority areas. The local authorities involved in the project thought that LAML was justified under section 2 of the PoWB because the realised efficiencies would be used to promote well-being. Upon legal challenge the ruling was made against LAML on the grounds that the PoWB did not provide legal reassurance to realise efficiency savings regardless of the final destination for the funding (Eaton, 2009). This friction point over the exact boundary between innovative municipal government and commercial activity could also humble a future proposed discretionary power. The NLGN (2010) highlights that “councils could use their competitive advantage provided through taxpayer subsidy to be anti-competitive” (NLGN, 2010, p.24). The salient point is that any general power clause would not, unless gauged correctly, provide the desired effect to engender greater local freedom; particularly if other factors on local authorities act as a brake on community leadership.

Another equally possible explanation for lack of use of the PoWB could be the unwillingness to expose the organisation to what is perceived to be an external ‘risk’. This theory underlines the criticisms of legal officers for risk aversion and adopting an overly-cautious approach to the interpretation of discretionary power provisions. In the following parliamentary session (2009 – 2010) the Conservative Party attempted to remedy this by inserting a GPC clause into the 2009 Local Democracy, Economic Development and Construction Bill (Great Britain. Decentralisation and Localism Bill, 2010). However, the New Labour Government instead inserted a specific provision that would allow local authorities to enter into grouped or co-operative mutual insurance companies (Great Britain. Local Democracy, Economic Development and Construction Act 2010). The GPC clause was originally announced in the Conservative Party’s Localism Green Paper, which would offer “freedom for local councils to act in the best interests for residents” (Conservatives, 2009: p.3).

The Decentralisation and Localism Bill proposed to offer a General Power of Competence to local government to “do anything that individuals may do” (Great Britain. Decentralisation and Localism Bill, 2010: p.13). A GPC would allow for local authorities to act in the same manner as individuals, except incur debt. If the GPC does not include finance then it could fall foul to the restrictions that may have resulted in limited use of the PoWB. The proposed GPC could be used alongside the Tax Increment Finance Scheme (held within the same bill), in a similar manner to the use of the PoWB in conjunction with supplementary legislation - the Local Government Act 2003 - to provide finance for proposals.

This proposed ‘general power’ clause differs to previous lobbying attempts for a discretionary power. Prior to the 2010 General Election, the LGA presented a draft Local Government Bill, which included a Power of General Competence that proposed that “a local authority should have power to do anything which it considers is likely to be of benefit (whether directly or indirectly) to (a) the whole or any part of the area, or (b) all or any persons residents or present” (LGA, 2010: p.7). A General Competence clause is seen as the “gold standard of legal freedoms for councils across developed western democracies” (NLGN, 2010, p.8). House of Commons (2009) concluded that local authorities required greater autonomy and sufficient formal powers highlighting that

“we have considerable sympathy with the case for local government to be given a general power of competence ... if local government is able to accumulate enough evidence that the well-being powers are falling short of a power of general competence to the extent that it’s impeding it’s local leadership role, then we recommend that the government should introduce a power of general competence for local government”

(House of Commons, 2009: p.32).

The absence of a General Competence clause for English Local Government, presents one of the most significant differences – besides the absence of a written constitution – between English and European Local Government. Although, it must be highlighted that not all European Local Government systems have a General Competence clause, the ODPM (2006) highlights

several countries that have written constitutions and General Competence clauses, which enables them to act on the behalf of residents and local communities. The ODPM makes reference to two particular European countries with systems that rival English Local Government, France and Sweden. Nevertheless, the ODPM (2006) also acknowledges that despite their constitutional advantages and a General Competence Clause, French and Swedish Local Government underwent decentralisation reforms i.e. constitutional protection. John highlights that despite the systemic reforms autonomy may only be skin deep, citing that:

“Many Napoleonic countries, such as France, have constitutional protection for local government, but this does not prevent central government ministries making crucial decisions that affect local choices. Nor should blanket provision, such as a [power of] general competence, encourage observers to think local authorities enjoy a strong independence.”

(John, 2001: p.33)

The ODPM (2006) does, however, highlight that whilst the exact legal definition of a General Competence clause may differ between countries and legal systems, an ultra vires principle is also always present. The ODPM notes that “General Competence is not a power to ‘do anything’ but a presumption that it can be done unless prohibited or in breach of a wider principle” (ODPM, 2006: p.28), which would therefore seem to suggest that it does not represent a power of first resort. However, the PoWB – which Central Government proposed would act as a power of first resort – was “not a power of general competence, although it apparently gives a wide and general power to act within what could be seen as the main remit of Local Government” (ODPM, 2006: p.25). Although neither form a power ‘to do anything’ (ODPM, 2006), the PoWB would seem to have fallen short of Central Government’s intention.

The LGA (2010) highlighted the LAML ruling as such an example of the PoWB falling short of central government’s desire that the PoWB represent a power of first resort. Initial research into the adoption and use of the PoWB found a lack of awareness (INLOGOV, 2008; DCLG 2008b) would further support the proposition that the PoWB fell short. There is an important distinction between

the proposed general power clauses that should be highlighted. The Decentralisation and Localism Bill (Great Britain. Decentralisation and Localism Bill 2010) offers a GPC whereas the LGA (2010) called for a power of general competence, which House of Commons (2009) had highlighted earlier. This distinction could be entirely semantic; however, given the difficulties legal officers had regarding the PoWB, the distinction could be an extremely significant one. Whether a GPC is more restrictive than a Power of General Competence remains to be seen. The Decentralisation and Localism Bill highlights that whilst the general power clause would offer local authorities vast freedom to conduct discretionary functions, it would also be limited by secondary legislation. The general power clause would remain within an intact ultra vires regime. The NLGN argues that the current legislative framework “suffers from significant shortfalls, stymies innovation and undermines true localist responses to the major financial, economic and societal challenges facing communities” (NLGN, 2010: p.4). NLGN (2010) then compounds the critique by highlighting the lack of available finance and the reliance on other sources of capital and revenue to support the use of the PoWB.

To remedy the problem highlighted in the current legislative framework, the NLGN (2010) called for the abolition of the ultra vires rule. The NLGN (2010) highlights the case for additional powers, outlined by several local authorities to House of Commons (2009). NLGN continues to maintain that the ultra vires rule “acts as a disincentive to think innovatively or to push the boundaries of reform” (NLGN, 2010: p.19) and that it is becoming clear that “the current legislative framework cannot provide the flexibilities to achieve these ambitions (NLGN, 2010: p.23). Nevertheless, despite the PoWB, local government suffers from a ‘complexity of legislation that inhibits confidence in innovation (House of Commons, 2009). Some local government officers argue in support of the ultra vires rule alongside a general power clause as stated in the NLGN report

“local government is due to get [a] general power of competence and I wouldn’t want to underestimate that because the reality is that some of the time we get very nervous about doing stuff. All of us work under statute of what to do. And the worst thing you can say to us is, you don’t

have vires, that's career threatening, that really is. So a general power of competence will give us more confidence."

(NLGN, 2010: p.19)

The viewpoint that the PoWB represented a power of first resort for local government (Braybrook, 2008; DCLG, 2008b; Eaton, 2009) needs to be revised. The PoWB has been used as a power of first resort by some local authorities; however the PoWB has not acted as a catalyst for local authorities to launch innovative community leadership policies as central government may have presumed it may have (NLGN, 2010: p.14). Furthermore there has been a staunch "reluctance [by some local authorities] to push its boundaries" (DCLG, 2008b: p.1). The NLGN cite many underlying reasons behind the lack of take up of the PoWB:

- The actual limitations of the PoWB;
- The legal, conceptual and practical confusion around the PoWB's exact scope;
- Inhibition surrounding a perceived lack of local capacity for its use; and
- The negative effect of unsuccessful attempts to use it.

(NLGN, 2010b: p.14)

Whilst a slim majority of survey respondents felt that current legislation is not sufficient to genuinely promote well-being (57%), the percentage of respondents that felt further legal power was required was lower (50%). This may be reflective of the belief amongst respondents that further 'general power' legislation is not the best route to being able to genuinely promote well-being, or that the legal discretionary power cannot be considered in isolation from the financial or operational considerations. Leading local government lawyers have questioned the need for and the legal basis of a GPC (Ahmed, Keith-Lucas, and Randall, 2009; NLGN, 2010b). Is greater discretionary power the best route to achieve innovative practice in local government as community leadership organisations? The survey reveals a paradox that whilst the current legislative framework may not be sufficient; the data reflected that the majority of local government officers did not require a further power of general competence. When combined with the responses on access to greater amounts of finance

and fewer performance metrics, respondents seemed to reinforce the belief that local government wants freedom and finance and then to be left alone (Wilson and Game, 2006).

#### The Scoping Study: implications for the research

The study revealed that the PoWB was used the most in economic policy areas - 36% of respondents indicated that their local authority use of the PoWB was focussed in economic policy areas – perhaps showing that some local authorities are using the PoWB to pursue traditional forms of economic growth and development. Usage of the PoWB in social and environmental policy areas was lower – at 26% and 20% respectively. However, 28% of respondents indicated that their use of the PoWB was to improve quality of life for residents. These findings on the use of the PoWB again illustrate a discrepancy existing in local government about the true potential of the PoWB – with the highest proportion of respondents using the PoWB in economic policy areas. One of the biggest potential points of confusion is what the Government meant by ‘economic’, ‘environmental’ or ‘social’ well-being – which objective should local authorities aim for? This builds on the linguistic challenges covered in chapter 2, but may be particularly relevant in this case, as the choice of name of the power (the PoWB) added to the inherent confusion over its potential. The NLGN (2010b) surmises this point by highlighting that “it has been unclear what exactly encompasses community well-being” (NLGN, 2010b: p.16).

Whilst there is a menu of national indicators that could be used to measure aspects of well-being, currently there is no comprehensive well-being indicator set and the majority of respondents (79%) felt that central government should not establish such an indicator set. The majority of respondents (75%) also felt that the measurement of well-being should not become mandatory at the local level. Large numbers of respondents stated their organisation already measures well-being – albeit under the ‘Health and Well-being’ agenda – which again reflects that respondents felt that more indicators are not necessary to measure well-being. Although the survey was extremely beneficial to the thesis

by provided a contemporary empirical base, the wider implications of the survey results provide much more insight into the research area. Crucially, the survey framed the next phase of the research (i.e. the interviews) but the survey results actually provided some unexpected results - specifically regarding the legal insufficiency of the PoWB and its potential replacement. The survey assisted in enabling the research findings to make broader inferences based on the general trends, which were then explored in greater depth in the interviews.



## **Chapter 4 – Methodology**

### *Aims and objectives of this thesis*

The aim of this piece of research is to evaluate local government's use of the Power of Well-Being and establish what factors may have encouraged or inhibited its use. This aim will be accomplished by meeting the following:

- Critically analyse the existing literature on local government, to establish the historical context of localism and inter-governmental relations.
- Explore the concept of inter-governmental relations in order to map a coherent theory on the tensions between local and central government.
- Develop a comprehensive typology of local authorities by identifying "proactive" and "reactive" local authorities.
- Gauge what research already exists into the PoWB, with particular attention paid to case studies of the usage of the Well-Being powers.
- Develop new trends on the usage of the PoWB by collecting original data from local and national perspectives.
- Develop further analysis on the future of localism under new political administrations, specifically with regard to the impact of cuts in public expenditure on the PoWB and how they might impact local authority activity.

As highlighted earlier in this thesis, whilst serious research into well-being is still in its relative 'infancy' (Bok, 2010) and the wealth of research is growing 'exponentially' (Veenhoven, 2007), the politics of well-being remains in an embryonic state (Bok, 2010). This thesis is an attempt at gauging the politics of well-being at the local authority level and to understand how the politics of well-being affect local government's discretionary activity. This chapter aims to identify and justify the methods that would be most successful in meeting the above objectives. Initially, the most appropriate theoretical approaches that would deliver the most reliable results will be identified.

### *Theoretical considerations*

One of the first considerations of this thesis was an ontological choice between two theoretical positions, positivism and interpretivism. Positivism is a school of

thought that is rooted in the idea that the scientific approaches from the natural sciences can be adapted to the social sciences that statistical logic can be derived from survey research and standardised interviews give access to the facts of the social world (Gilbert, 1993). The central tenants of positivist research are:

- Patterns, trends and regularities exist in the social world, just as they do in the natural world.
  - These patterns and regularities exist independently of each other and are waiting to be discovered.
  - These trends exist through a careful linear causal process, i.e. through cause and effect. There are no random events.
  - These patterns exist naturally; they are not created through research.
- (Denscombe, 2010)

The second theoretical position, interpretivism, focuses on the “meanings that shape actions and institutions, and the ways in which they do so ... in short, interpretive approaches study beliefs, ideas or discourses” (Bevir and Rhodes, 2000: p.131). Whilst there are various different methods under the blanket term of Interpretivism, the basis is a shared assumption that understanding of social reality cannot be gained without understanding meanings (Bevir and Rhodes, 2010) and a rejection of positivist themes (Denscombe, 2010). The core themes of interpretive research are:

- Social reality is subjective rather than objective and can only be understood through human actions.
  - Research participants react to being under study. Participants exhibit a level of self awareness that does not exist in the natural world.
  - Participants can react to the knowledge being produced by the research. The knowledge has the ability to be absorbed by them to interfere with the initial findings of the research.
  - It is impossible to gain an objective perspective on the research; social research can be influenced by the values, expectations and interpretations of the researcher.
  - Grand over-arching theories are not possible. Since explanations can be (and inevitably may be) influenced by the researcher’s values, it is difficult to assume that one theory can explain the social world.
- (Denscombe, 2010)

In this world there are no ‘brute data’ whose meaning is beyond dispute” (Yanow, 2000: p.5), and this thesis firmly maintains that to offer an analysis of local government’s use of the PoWB (and of factors instrumental in decision to use it) an Interpretive position must be adopted. Furthermore, given the research emphasis on the politics of well-being, when considered with the subjective nature of well-being, an Interpretive position would seem to be a prerequisite. Yanow (2000) notes that, policy language should leave no doubt in the audience’s mind as to its meaning. This clarity may be found missing in the PoWB. Yanow cites that:

“when policy language is examined, for example, a comparison is often made between the words of legislation and the projected or implemented actions in the field, under the assumption that policy words can and should have univocal, unambiguous meanings that can and should be channelled to and directly apperceived by implementers and policy-relevant publics”

(Yanow, 2000: p.6).

Some political scientists, however, offer criticisms of interpretive theory maintaining that:

- It cannot allow for the material constraints on social action
- It cannot account for the solidarity and persistence of institutions
- It lacks the necessary critical power

(Bevir and Rhodes, 2000: p.149-150)

Yet Yanow offers that interpretive theory enables a research method to explore the difference between “what implementers do, rather than what the policy “says” in its explicit language, constitutes the “truth” of policy (and thereby the state’s) intent” (Yanow, 2000: p.9). Furthermore, a simple positivist approach may not provide the correct level of insight because the perceptions of the PoWB are necessary in order to establish trends on its use. Whilst statistical research could gauge levels of usage, general trends could not capture the attitudes towards the PoWB and therefore the most valuable element of the research – ‘the why aspect’ – might be excluded. However, as will be mentioned later in this chapter, a quantitative element was added to the initial

stages of this research in order to triangulate the research and target the substantive qualitative element later in the research process. Therefore interpretive theory will be more likely to provide more accurate results because it takes into account the practical reasoning behind the decision to use of the PoWB, allows for both the focus on 'meanings' and the distinction between the explicit and implicit aspects (Yanow, 2000; Bevir & Rhodes in Marsh et al, 2000; Brannen, 2005). Ultimately, for these reasons, an interpretive approach was chosen to be used in this research.

### *Designing the Research*

By adopting an interpretivist approach, a significant aspect of the research would inevitably be qualitative. Although the initial research strategy determined that a solely qualitative approach would be adopted, iterative enhancements to the research design meant that a quantitative aspect (in the form of a postal survey questionnaire) was added to enable triangulation and to frame the later stages of the research. This will enable the thesis to infer wider conclusions about the PoWB and the factors that influence local authorities to use it. However, the substantive bulk of the research for the thesis remained qualitative.

Furthermore, whilst the initial plan favoured conducting interviews with only local government officers, it was recognised that the perspective of local authority elected members would be particularly helpful in providing a more holistic picture of the PoWB and factors associated with its usage.

It was determined that this thesis would be composed of three strands of research. The first strand would be a scoping study to triangulate issues for the in-depth research. The second strand would be composed of nineteen scoping interviews with senior legal officers from local authorities on the legal basis of the PoWB. Finally, the third strand would be composed of four in-depth case studies of local authorities that have used the PoWB with each case study comprised of roughly five interviews. In deciding to adopt these methods, it was

determined that time constraints on the research process would need to be taken into account. To establish a national perspective and harness various local trends, a degree of flexibility over the type of interview questions and the ability to adapt the questioning was required in the research.

These requirements could be fulfilled by using qualitative methods, but not by solely using quantitative methods, as quantitative research may only offer a limited range of responses (Devine, 2002). However, to apply an element of validity and to attain a high level of rigor in the research, a multi-method design was adopted in this inquiry. Casebeer and Verhoef (1997) highlight that multi-method research can often produce more interesting or applicable results.

Morse (2002) highlights that increasing reliability and validity in quantitative research can be an appropriate route to attaining rigor in qualitative research. However, this research is, to an extent, internally valid (and therefore rigorous) because of the breadth and variety of the case studies and interviews within each case study. Furthermore, these findings offer deeper insights into local authorities' uses of the PoWB and can be applied to offer insights into local government activity and autonomy.

At the beginning of the research project, a work placement had also been completed in a local authority in the North East of England. This placement offered great benefit to the study as it provided an insight into local government operations.

During this time the participant's workstream mainly involved monitoring emerging legislation and issues that could impact upon council operations; as well as working on special projects that emerged on an ad hoc basis. This placement provided the researcher with a wealth of information through observation of working with local authority officers – at different levels of seniority – and local councillors at difficult period of organisational transformation. This placement helped by offering the researcher a greater understanding of priorities, challenges and demands on local government

officers and elected members, not just in that local authority, but across many others, by gaining an insider perspective on policy development. Through the workstream, the researcher gained an in-depth understanding of the competing challenges faced by local authorities on a daily basis, which is not an understanding easily accessible to researchers without any previous experience.

Although this could impact negatively upon the research, by losing objectivity from the research area and therefore potentially becoming pre-occupied with a single perspective, having this experience offered the researcher a distinct advantage in establishing legitimacy in the research interviews. Furthermore, it enhanced the researcher's understanding of both the local government sector and the policy development process from a local authority perspective (Bryman, 2004).

As highlighted, the existing literature on the PoWB supposed that it represented a power of first resort for local government (Braybrook, 2008). However, initial research showed that this was not the case as few local authorities were actually using the Power (DCLG, 2008). Interpretive policy analysis offers the ability to discern between the 'word' and the 'deed' (Yanow, 2000), thereby allowing researchers to differentiate between the intended meaning (i.e. what the authored text sources says) and the variant meanings (i.e. what the constructed sources says) (Yanow, 2000: p.9).

Furthermore, the existing literature on the nature of well-being demonstrates that, whilst the politics of well-being is a new area of research, well-being itself is a social concept and that well-being can be influenced by a variety of factors. Therefore, for these reasons, using solely quantitative research methods might not provide a thorough analysis on the reasons for the use of the Power and might limit insights into the behavioural and organisational aspects that relate to the use of the PoWB. This thesis will, however, use the supposition that the PoWB represented a power of first resort (Braybrook, 2008) as a benchmark against which its use will be assessed.

### *The case study approach*

“the essence of a case study, the central tendency among all types of case study, is that it tries to illuminate a decision or set of decisions: why they were taken, how they were implemented, and with what result”  
(Yin, 2009: p.17)

Yin (2009) demonstrates the appropriateness of using case studies as a research method by stating that although alternative methods (i.e. archival analysis and survey method) would offer answers to the research, only the case study method is more explanatory and could allow the research to dovetail with operational or organisational links over time; rather than solely accounting for the frequency of an occurrence. Yin, however, also highlights that survey methods can be extremely useful in trying to plot the ‘prevalence of a phenomenon’ (Yin, 2009: p.9), which this thesis used to provide contemporary evidence on the use of the PoWB and establish the context of the research.

Whilst the case study method is a ‘distinctive form of empirical inquiry’ (Yin, 2009), and for this thesis a multiple-case study was decided to be the most appropriate research method, many researchers tend not to use the case study method in favour of surveys or experiments. This disdain towards the case study method is, perhaps, the result of less than rigorous research (Yin, 2009). Whilst a lack of rigour is less likely to be found when using other research methods, it is possible for bias to enter into the use of other research methods but in case study research “they may have been more frequently encountered and less frequently overcome” (Yin, 2009: p.14). Devine (2002), however, highlights that this potential lack of critical objectivity is applicable beyond case studies to the wider context of qualitative research.

A further concern about the suitability of case study research relates to whether or not case studies can be generalised to infer wider results. However, this research project will use a multi-case study method that will increase the degree to which the research findings can be generalized to apply to the wider sector.

Even so, this will enable the research results to be expanded and ‘generalize theories’ (Yin, 2009) but not to provide detailed list of the prevalence of the usage. Moreover, Devine states that the findings from a single in-depth case study can be corroborated by using other in-depth case studies (as well as, or potentially alongside, other research methods) to establish similarities and variances; as such providing a ‘limited test of confirmation’ (Devine, 2002: p.207).

Devine further highlights that qualitative research methods “can have [a] wider significance beyond the time and place in which it was conducted” (Devine, 2002: p.207). Whilst this research offers an insight into local government’s use of the PoWB, it also offers a significant insight into contemporary inter-governmental relations in the England and could provide useful lessons for local government powers in the future – particularly the use of a General Power of Competence.

It was decided that the main qualitative method used in this investigation was to be interviews. Interviews were employed in two of the strands (the case studies and the scoping interviews); and they enabled access to a greater wealth of information relating to the research question. In conducting interviews, it provided the opportunity to gauge local government officers and elected members’ views and perspectives of the PoWB, and interpretations on its usefulness as a power of first resort for local government.

The initial research conducted on the PoWB, into local authorities’ usage of the PoWB (INLOGOV & UWE, 2007; DCLG, 2008; 2008b), may have influenced the perception of the researcher on the use of the PoWB. To counter this potential perception and to provide a more contemporary account of levels of usage of the PoWB, a scoping study was carried out. This allowed any perceptions to be based on contemporary evidence. Whilst interviews are an invaluable tool for qualitative researchers, semi-structured interviews allow greater freedom for the interviewees to explain answers in further detail and allow the interview to raise any issues of interest as the interview progresses



that may be especially relevant to the research question. The alternate, a structured interview, would not allow as much freedom as semi-structured interviews and might not allow the interviewer to fully tailor the interview to individual circumstances. The decision to make the interviews confidential ensured that the researcher could remain in control of the research process, assured the participant's of anonymity thus enabling officers and elected members to speak freely.

An alternative methodology that was briefly considered was using focus groups of local government officers and members. The use of focus groups in the research could have produced a wealth of material for the thesis, from debate on the nature of the specific power to the nature of central-local relations. However, it was felt that this method might not be beneficial for the thesis as a whole. The focus groups could have become dominated by a specific perspective or obsessed with a specific topic, which may not have produced the best data. Furthermore, less confident or less vocal participants might have been intimidated from airing their views if the group had become dominated by a specific perspective. Indeed, if the focus groups were composed of elected members then, given the variety of political parties involved, there was a risk that the debates could have resorted to a discussion on political parties, which may have become counter-productive. Moreover, it would have been difficult to ensure anonymity in the focus groups which may have affected their answers – particularly the answers regarding the role of local government in the future with reduced public spending.

Finally, focus groups would involve getting multiple local authority officers and members in a room at the same time or on multiple occasions that, given the time constraints on both the research inquiry and the research participants, may have proved to be impractical. Therefore it was decided that semi-structured interviews in multiple-case studies, in combination with a questionnaire and further semi-structured 'scoping' interviews (to provide more detailed insights) would be the best methodological approach.

### *Selecting the case study authorities*

It was decided during the first stages of the research that the case studies should represent a cross section of local government in the UK. As such the case study authorities had to be a mixture of local authority organisational type, size, geographical location, population served and political party in control. Since the Local Government and Public Involvement in Health Act 2007 (Great Britain. Local Government and Public Involvement in Health Act 2007), the PoWB has also been devolved to Town and Parish Councils. As very little, if any, contemporary academic research focuses on the role that parish councils can play in local communities and the growing emphasis (and prevalence) of parish councils, it was decided that the research should comprise of all levels of local government – including Town and Parish Councils. Given the decision to include all levels of local government in the research, it was decided to separate the case studies into two strands; one for the principal authorities and another for the tertiary authorities participating in the research.

As stated the main qualitative research method in this thesis was semi-structured interviews, and the majority of data will come from the case studies. Selecting the local authorities to approach to be case study authorities was particularly difficult. The case studies would be separated into two groups, principal authority case studies and tertiary authority case studies. Within the principal authority case studies, a broad range of interviewees were sought. A broader range of interviewees (i.e. interviewees from across the authorities' directorates and not from a single directorate that could affect the findings) would ensure balanced findings. Therefore, in each case study, interviewees were sought from policy, financial, legal and the chief executive's departments, as well as an elected member. These potential interviewee categories were outlined in the original letter to the Chief Executive. The final individual interviewees, however, were identified by the authority's Chief Executive.

The majority of the Tertiary Authority case study interviewees, however, were elected members – given the comparative size of authority types.

Nevertheless, the Tertiary Authority case studies also included at least one authority officer as well. Although, similar to the Principal Authority case studies, the respective interviewees were identified by the Chairman of the authority, who serves a chief executive type function.

Given the absence of a published document that listed every local authority that had used the PoWB, selection involved reviewing the limited literature on the subject to establish which local authorities published examples of usage. The first step was to eliminate those local authorities that had identified themselves in the postal questionnaire and had stated that they had not used the PoWB. The second step, the literature search, led to the Local Well-being project; a three year study of three local authorities on how they promoted local well-being (Bacon et al, 2010).

It was decided that to contact each local authority a letter would be sent directly to the Chief Executive as this would enable a swift decision to be made, and would assist in gaining access to the relevant officers within the organisation if the Chief Executive had already approved the research. However, after contacting the three local authorities that originally took part in the Local Well-Being Project, and discussing the research with policy officers, only one local authority agreed to take part in the research. The other two local authorities offered apologies that they would not be able to take part in the research as the relevant policy officers with the knowledge and experience of using the PoWB had left the authority, which itself was an interesting finding that could contribute some explanation regarding low usage of the PoWB.

As a result of reviewing the academic literature on contemporary local government, two leading local authorities were targeted and approached as other potential case studies. However, unfortunately, both came back offering their apologies citing that the relevant policy officers had left the authority, and no other policy officers had experience or knowledge of the PoWB, which further compounded the growing trend (and relevance) of this finding. After further reviews of secondary data, a number of other potential case study

authorities were identified. These potential local authorities were approached about participating in the research. However, unfortunately whilst some authorities reported that the relevant officers were no longer employed by the authority other respondents stated that due to current demands and pressures on officers and members they would be unable to commit to participating in the research project.

From a further review of the secondary sources, the remaining two case study authorities were identified and approached. Following some negotiation, further explanation of the research objective and what the research would entail, both of the identified case studies agreed to participate in the research. Their agreement completed the first strand of case studies – the principal authorities group. Given the relatively recent extension of the PoWB to Tertiary authorities, the sample group (for the second case study group) was relatively small. This was further compounded by the powerful restrictions placed on the tertiary authorities when adopting the PoWB. The conditions placed on tertiary councils required the council to have:

- A qualified clerk,
  - A minimum two thirds of the vacancies on the council filled at the last ordinary elections,
  - 80% of councillors trained in the use of the PoWB, and
  - Published a statement of intent as to community engagement.
- (DCLG, 2009: p.6)

Following a conversation with several policy officers at the National Association for Local Councils (NALC), a number of potentially eligible case study councils that could use the PoWB were identified. As highlighted, Tertiary Authorities have not been able to use the PoWB for very long, and very little academic research has been conducted on the use of the PoWB by tertiary authorities. Therefore, Tertiary Authorities had to be approached about participating in the research on an individually. Furthermore, participation in the research project had to be approved at a meeting of the council, where individual members could be identified to take part in the research.

Whilst the views of elected members of the councils are crucial in providing a holistic perspective on the PoWB, it was also essential to include the views of officers from the Tertiary Authorities to offer a balanced perspective, in case the members presented an unbalanced view. However, when these factors were combined, it substantially increased the timescale involved in carrying out the research.

Nevertheless, two of the councils contacted ultimately agreed to participate in the research. Whilst these councils had only used the PoWB in a limited manner, the manners in which the PoWB had been used differed to the extent that it would be possible to infer wider generalisations about the uses of the PoWB by tertiary authorities, and the relative freedom that it offers them. As highlighted earlier, an important consideration when gathering participant case study authorities was that they would be varied enough to offer a cross-section of local government; so that broader inferences could be made about the nature of the PoWB.

### *Selecting the scoping interviews*

The second strand of interviews, on the specific legal aspects of the PoWB, was slightly easier to arrange than the case study authorities. Although the interview participants were all senior local government officers and therefore extremely busy, given the limited commitment required of each participant, taking part in the research as a scoping interview would involve a much lower commitment of officers' time than taking part as a case study authority. Furthermore, it was essential to maintain the variety amongst the interview participants to ensure a decent cross-section (the same as the case study authorities), which would enable the thesis to make wider inferences about the attitudes of senior local government legal officers on different aspects of the PoWB. This cross-section was established across the same themes as the case study authorities i.e. size, political party in control, local authority organisational type, population served and geographic location.

The second strand of the research, the scoping interviews, offered a national perspective on the PoWB. Although this perspective cannot be regarded as holistic nor exhaustive, the scoping interviews (all with senior lawyers from local authorities) offered a wider perspective that could build upon the findings from the in-depth interviews from the case study authorities.

Aside from the two strands of qualitative interviews, it was decided that documentary analysis should be undertaken to provide the context to the interviews. Policy documents, relating to Tertiary Authority's use of the PoWB, would be analysed from an interpretive perspective to establish the local "truth" of the PoWB besides that "authored" (Yanow, 2000) perspective that it represents a power of first resort for local government. As public documents, however, the audience was clearly established and their purpose was clearly to inform; the documentary analysis provided crucial context for the case study authorities. However, the qualitative aspects of this thesis were designed to operate alongside a smaller quantitative aspect as well. It was decided that the quantitative element would offer an element of rigour and robustness to the research, which would furthermore enhance the degree that the research findings could be generalised. Moreover, to enhance the rigorousness of the research and to establish a contemporary evidence base for the thesis, it was determined that the quantitative element would be carried out before the main qualitative elements.

In selecting the scoping interviews and the case studies, one main issue arose from both which was accessibility to interviewees. Although this issue occurred in both scoping and case study interviews, it was primarily an issue in the latter. As taking part as a case study authority would involve sacrificing senior officer's or elected members time, and since at least five interviews were needed per case study, this allocation seemed to be a prohibitive factor for some local authorities that were contacted. This was accentuated by the time that this research was being conducted, particularly as individual local authorities were facing potential funding cuts from central government and continued policy changes in response to ongoing recession.

For the research, these consequences impacted on the accessibility of officers and members. Whereas an authority may be able to spare officers to take part in a scoping interview (i.e. only an hour), officers or members taking part as a case study (i.e. sacrificing between five to ten hours) caused some participants to reluctantly decline participation in the research. These factors, when combined with the fact that the sample was limited to those local authorities that had already used the PoWB, reduced the number of prospective case study authorities and proved a fairly significant access issue. It was not, however, ultimately prohibitive. Whilst some local authorities responded, declining due to staff commitments, case study authorities were identified.

### *Questionnaire*

Whilst a comprehensive review of the existing literature provided the context for the thesis, there was no contemporary evidence on the levels that local authorities had used the PoWB. Although the significant majority of research conducted in this thesis is undertaken from a qualitative perspective, it was determined early on in the research to support the literature review with a questionnaire. In the context of this research, to avoid confusion, throughout this thesis the questionnaire refers to a postal survey that was sent to potential respondents for them to fill in themselves. Gilbert highlights that sometimes a questionnaire is a “document that containing a set of questions for respondents to complete themselves and sometimes to mean the list of questions which an interviewer reads out to respondents” (Gilbert, 1993: p.96). Yin highlights the usefulness of using quantitative data in combination with the case study method for two reasons.

“First, the data may cover the behaviour or events that argue the case study is trying to explain – typically, the ‘outcomes’ in an evaluative case study. Second, the data may be related to an embedded unit of analysis within your broader case study”

(Yin, 2009: p.133)

Gilbert highlights that “the main argument against using postal questionnaires have generally been that the response rate is low (many postal surveys do not achieve more than 50% rate of return)” (Gilbert, 1993: p.96). Whilst the rate of return is an issue of concern for many researchers that use postal questionnaires, the postal questionnaire used in this research offered a rate of return of roughly 26%. Yin (2009) cites that whilst the main research question is aimed at a higher level, and the qualitative data can explore or describe the events at this higher level, the quantitative element can establish important aspects of the research.

In the context of this thesis, the research question explores the role of local government’s use of the PoWB (and the case study authorities provide original data on their usage) whilst the questionnaire offers the contemporary context i.e. Yin’s (2009) ‘outcomes’. Furthermore, the quantitative element was decided upon because, whilst a valid cross-section of local authorities was established in the case studies, due to time constraints, it would not be possible to conduct research in every local authority in the UK and this questionnaire offered a basic template that would enable wider generalisations to be made.

#### *Aligning qualitative and quantitative research methods: multi-method research*

Realising the potential benefits, it was decided that this thesis should adopt multiple research methodologies. There are two main reasons for combining the research methods within a single research project:

- “First it may be that using one method does not allow the researcher to address all aspects of the research question.
- Second, many researchers argue that combining methods increases the validity of research, because using a variety of methods means that one method serves as a check on another”

(Read and Marsh, 2000: p.237)

Whilst Read and Marsh highlight that quantitative and qualitative methods are used by researchers to find different things, it is also highlighted that “while there are differences, these can easily be overemphasised” (Read and Marsh,



2000: p.232). In considering combining research methods, the key issue is over ontological and epistemological differences, and importantly how they impact on the methodology. During the twentieth century, social science research has been dominated by quantitative methods and positivist perspectives. Whilst the “postmodern turn in sociology has led many to reject quantitative methodologies” (Read and Marsh, 2000: p.236) and this thesis maintains a substantial qualitative bias, it also acknowledges the importance contributed by using quantitative methods to compliment the qualitative aspects. Hammersley surmises that

“each has its own strengths and weaknesses as an approach to the conduct of social research. It is these strengths and weaknesses that lie behind the rationale for integrating them. “

(Hammersley, 1992: p.59)

With the separate strands of the research design finalised, namely the interviews and the scoping questionnaire, the ethical implications for the research design were considered. As the two strands of semi structured interviews were doubly-anonymised (i.e. the interviewee’s name and the authority’s name were withdrawn) the ethical implications of the interviews were minimised. Furthermore, as only the interviewee’s role was referred to any potential ethical issues (in being able to identify interview participants) were reduced to an absolute minimum. The implications for the questionnaire however, were further reduced because respondents had a choice whether or not to respond. Moreover, the questionnaire itself was fully anonymous. With three separate strands composing the research design, the integration of the different elements of the fieldwork would be carefully conducted to fully achieve a multi-method research project that realises the potentials benefits of both methods. As mentioned, the postal survey was conducted to triangulate the latter stages of the research and provide national perspectives on the PoWB – and local government’s attitude towards discretionary legal power.

The scoping interviews, all conducted with local authority legal officers, were meant to underline the findings from the postal survey. None of the scoping

interviews were geographically biased, all the interviewed were varied by geographic location that could remove the possibility of local or regional networks that promote usage of the PoWB. The findings from these interviews were then used to further refine the initial results of the survey, and to provide additional validity to the trends emerging from the postal survey. The in-depth case studies however, offered the bulk of the qualitative data for the research project. As highlighted, the key findings - from the case studies - provided the bulk of the data that assisted in the development of the typology for discretionary activity. The data emerged into three fairly clear classifications, which formed the basis of the typology.

In summary, for this thesis, it was decided that using both qualitative and quantitative research methods would ensure a greater degree of validity and rigor for the research findings, and by maximising the advantages of both methods it offer a greater wealth of data.

## **Chapter 5 - Case Study findings: Principal authorities**

Over the following four chapters, the main findings from the case studies will be mapped out. Each chapter will present the main findings from a case study. The first two chapters will present the evidence from the principal tier (i.e. unitary, county or district authorities) case studies. The findings have been categorised into a number of key themes that will assist in a thematic evaluation of the findings later in this thesis. These are,

- Awareness of the PoWB
- Attitude towards the use of the PoWB
- Policy Focus
- Enhancing autonomy, rebuilding local authorities' capacity
- 'New' localism or New 'Localism'
- Futures Challenges

These findings will also assist in capturing the different attitudes of officers and members towards its usage and, finally, in developing a contemporary typology of local government in the UK.

### **Local Authority A**

#### *The local context*

Local Authority A is a large unitary authority in the North of England. In the 2001 Census, the authority area registered a population of 307,190 people of which 99.9% were white and 0.1% of the population were of black minority ethnic background – far below the national average of 9.1%. A primarily rural area - with a significant proportion of the total area included in a National Park - the area also includes significant areas of coastline, hillside and moorland. Although the traditional economic basis of the local economy lies in industry, since 2000 the local economy has been growing at a strong rate, whilst

diversifying into non-traditional areas such as tourism – with roughly 1.3 million visitors per year.

Despite this strong growth trend, the area remains one of the weakest regional economies in the UK. The area remains a satellite economy, being bordered by smaller geographic but bigger population areas with higher value labour markets. It is one of the most rural counties in England, and as such one of the most sparsely populated with roughly 160 people per square mile. Authority A has 48% of the total population in the urban centres, which are concentrated in the south-east corner of the authority area. However no urban settlement in the area has more than 39,000 residents.

The consequence of the population concentration is that the bulk of the employment base of the area is also concentrated in the south-eastern corner of the authority area. The net unemployment of the authority area (before financial crisis in 2008 the area had an unemployment rate of 2.8%) remains broadly consistent with national trends, although rock-pools of higher than average unemployment remain in some urban areas. The average wage in the authority area is significantly lower than national average levels. This is, in part, due to a high proportion of the labour market being constituted of either part-time or unskilled employment. A further consequence is that a relatively high proportion of urban areas served by the authority fall into the worst 10% in the UK in terms of deprivation (IMD, 2007).

In 2009, the authority was reorganised into a single Unitary Authority from a single county council and six district councils. This reorganisation was conducted in pursuit of simpler and clearer public services being delivered in a more cost-effective manner.

### *The political context*

The largest political group in Authority A at the time of the research being conducted was the Liberal Democrats; although no party holds overall control of

the authority. Whilst there are a number of contrasts within the local authority area, traditionally, the urban areas offer strong support to Labour whilst the more rural parts of the authority area represent a bedrock of support for the Conservative Party and the Liberal Democrats. Below is a table outlining the breakdown of the political groups in Authority A at the time that the research was conducted.

Figure 9: Breakdown of elected members in authority A by political party

Total number of Councillors	67
Number of Liberal Democrat Councillors	25
Number of Conservative Councillors	17
Number of Labour Councillors	17
Number of Councillors from other political parties	8

The local context that the research was conducted in is significant because it offers insight into factors that can affect local politics and how the authority operates, and offers information on any significant issues facing the authority. The staff levels, together overall resources available to the authority, and the size of the area that it serves may affect both the capabilities of the authority (i.e. the ability of the authority to act), the approach that it might take to local governance (i.e. whether a joined-up approach is plausible) and whether it focuses on strategic level governance or on community level governance.

Furthermore, Local Authority A also has a high prevalence of Town and Parish Councils. There are over 120 Town and Parish Councils in authority A that are served by well over 1200 Town and Parish Councillors. Given the function of Town and Parish Councils, and that they have the power to provide additional services for their local areas, could this offer significant insight into the level of activism in Authority A? That is to say, given that Authority A is a Unitary Authority, does it focus on strategic growth and interventions whilst the Town and Parish Councils focus on community level governance?

This may offer an important consideration for the findings on the usage of the PoWB, particularly as - since 2009 - Town and Parish Councils can also use the PoWB.

### *Awareness of the PoWB*

Awareness of the PoWB in Authority A is high. Indeed, one member of the senior management team had a history of using the PoWB in other local authorities.

“I did have some involvement in, not the drafting but advising the Chief Executive of the authority that I worked in at the time in terms of what he was saying to Hilary Armstrong and Stephen Byers. At that point we were founder members of the New Local Government Network ... So I've got a little bit of history on the PoWB.”

Another member of the senior management team also had previous experience of the PoWB, again at another authority.

“The first time I really used it was when I was at another local authority, we had quite a neat little project in a small village. It was an old mining village, back to back houses and it was housing market failure. So we bought the houses from the owners at above market value using the PoWB, because it then facilitated a huge public investment in the housing market renewal and it created a lot of financial value.”

In some cases officers' awareness of the PoWB was narrow

“whether it's understood throughout the organisation I think is questionable, because I think the majority of councillors or majority of council staff wouldn't come under the sort of legal definition”.

Amongst the senior management team awareness of the PoWB remained high. Furthermore, awareness of the policy context and conceptual basis of the PoWB was noticeable, one interviewee citing

“I think within the senior councillors and senior management team it's well understood”.

A policy officer opined that the origin of the PoWB was more abstract, than a mere solution to practical problems,

“I think it came from a political, ideological position almost, in terms of the Labour Government of that time working around broader considerations about health and quality of life. That was certainly the political driver for it, it’s not that much different now.”

However, a legal officer cited that the change engendered by the PoWB is more subtle; the opportunities allowed by the PoWB were designed to promote a greater sense of ambition in local authorities, to enable an organisational change.

“In many ways, when you sit down and look at something you say ‘well you do it because of the PoWB’ but when you sit down with the lawyers they might say ‘well actually you can do it because of that’. I think the very fact that it’s there encourages people to think that it is possible and maybe also encourages the lawyers to be a bit more broadminded because they know they’ve got something to hang it on - if all else fails.”

Awareness of the PoWB may be narrow on some levels of the organisation, this seems to vary between levels of governance (i.e. between Principal and Tertiary Authorities) and service directorates; however interviewed officers and members were found to be relatively well informed on the scope of the PoWB. This finding also implicitly questions the degree of accuracy of the levels of usage of the PoWB across the UK. As a finance officer commented on the levels of usage of the PoWB amongst English local authorities:

“actually, if you just look at the hard facts, you’ve got no way of analysing ‘well did people go down this route’. So my gut feeling is that it’s probably used by more authorities than is generally accepted; certainly talking to colleagues within the region everyone seems to have examples of things they’ve looked at a little bit differently.”

#### *Attitude towards the use of the PoWB*

One senior legal officer summarised his attitude towards the PoWB, citing that:

“I suppose I take the view, if the local authority feels that it’s something which would be of benefit to the residents then it gives us the legal authority to do it – if there isn’t other clear legal power on which we’d sort of hang the action.”

Whilst the PoWB seems not, in the opinion of officers interviewed in Authority A, to be a 'power of first resort', the attitude of local authority officers and elected members showed that the PoWB is a broadly enabling power. Importantly several officers recognised that there are some significant (de facto) inhibitors to the adoption of the PoWB. One member of the senior management team stated:

"I think lawyers are reluctant to use it. It's been me that's said 'can't we use the well-being power' rather than the lawyers. I don't think the chief legal officer here would be among the people I've just criticised though. Generally, as a community, I think they found it quite a hard concept, it was too slippery, which is why I like it. Two more things, first of all the fact that in most cases you do have another power you can use it under, and secondly the inability to use it to raise money. So you can do anything except prohibited stuff, and stuff that makes money so I think that's a major inhibition to its usage."

Whether or not these inhibiting characteristics act as a preventative measure that counters the enabling nature of the PoWB - for local government as a whole - remains uncertain. However, in authority A, this does not seem to be the case. In fact, officers and members in authority A seem to have adopted the attitude that despite the inhibiting measures that accompany the PoWB, it still represents a 'catch-all' power. This underlines the inherent requirement that the local authority needs to have the ambition to use the PoWB. One member of the senior management team succinctly summarised the point;

"it does give us quite far reaching powers to do things but then a lot of it comes back to has the organisation got the appetite. Is it prepared to do things a little bit different and take a risk?"

One elected member, however, also argued that authority A is a unique authority.

"...because of how rural we are, and whether there is the capacity to do things within the authority, resources, financial and physical. There are a number of things which come together to inhibit its use, not least the fact that most of what we do is through other means so it's not relied upon"



The attitude towards the PoWB is emphasised by one legal officer's acknowledgment that whilst some local government officers found the concept that the PoWB was based on too 'slippery', the senior management team in authority A were ambitious in their perception of how the PoWB can be used.

The PoWB was exactly the "slippery" concept that enabled them to use it. As the PoWB was not proved that it could not be used in particular scenarios, and therefore did not have parameters nor restrictions - beyond the ultra vires principle - it could be used a general power. Furthermore, the setting is important, as one elected member recognised that authority A is unique because of the area that the authority covers and the organisational capacity of the authority.

One officer cited that the main factor that facilitates the use of the PoWB is basically "when you haven't got another power". As highlighted previously, the PoWB has an inherent requirement that the local authority has the ambition to take action. Given the acknowledgement without accepting the limitations on the PoWB - and instead working around the restrictions - it would be fair to argue that authority A demonstrates a *proactive* attitude towards the use of the PoWB.

"I think the natural approach from a legal officer is to say 'is there a particular power that would enable this, check, yes, and if not then I'll default' so it's a bit of both really."

Whilst officers and members in authority A recognise that the PoWB itself does enable a greater sense of legal autonomy, members particularly, acknowledge that this sense of legal freedom must be matched by operational and financial autonomy.

However, greater organisational autonomy - in the sense of the authority's pro-activity and ambition - can bypass some of the (de facto) restrictions attached to the PoWB.

## *Policy Focus*

One policy officer from authority A, who had no history of using the PoWB in their former authorities, tried to offer background into its origin. As a “slippery” concept, the basis of the PoWB may have had some impact on the level of usage: “the definition of well-being is a philosophical one, which is the happiness that David Cameron is clearly very keen on.” The PoWB seems primarily to have been used as a power that enables intervention when no other alternative exists. Rather than a power of first resort, it might be more accurate to describe the PoWB as a power of last resort. Instead it seems to represent a catch-all power that encourages local authorities to intervene and enables them to do so.

There doesn’t seem to be a defined policy area that PoWB has been used in; in Authority A it seems that the PoWB has been used to promote a more holistic quality of life for residents. However, a finance officer from Authority A acknowledged an inherent problem with using of the PoWB.

“There’s a kind of Audit Commission definition which is measurable improvements in the quality of life, principally in the three elements of well-being. The problem there is that the Audit Commission is quite tick boxy and it was basically output measures; so number of jobs or whatever it was, doesn’t really give you the outcome. You need something else behind that.”

One member of the senior management team highlighted a previous practical example of usage of the PoWB by Authority A, which lies outside of local authorities’ traditional remit. The authority used the PoWB to authorise the purchase of a frozen food factory that was likely to close – as a result of the recession. The closure of the frozen food factory would have had a devastating impact on the local community, therefore the senior managers and elected members decided to intervene to support the factory using the PoWB.

“Recently here we’ve done the frozen food factory ... we used the PoWB for that. Plus there were broader social and economic issues at stake, a company of 200 in a community of 4500. So it wasn’t just the company itself; it was the impact on the community and the 200 people and their

families suffering unemployment. So there was quite a strong case there.”

A legal officer highlighted that from his point of view authority A was acting in a way that would traditionally be classified as ultra vires, but the PoWB provides additional assurance to traditional ‘grey’ areas that lack enabling legislation. An example given by another officer further highlighted the ability of local government to positively intervene on behalf of the local community, which ultimately had the objective of enhancing the local quality of life.

“we were concerned that a local college faced quite a difficult financial situation, they would struggle to borrow the money themselves and it would certainly be more expensive than for us to access the money. So because we’re trying to forge a strategic partnership with them, we were able to use that power to borrow money to help them with cash flow and we’ve got security for that because we put a charge against some of their assets. So from our point of view, it’s quite safe.”

Most of the examples provided by the officers and elected members interviewed in Authority A emphasise the interventionist role of local authorities with regard to community leadership. Most of the examples also underline the strong link between promoting well-being and local authorities’ community leadership. One member of the senior management team argued that:

“there’s a clear link between the statutory basis for the PoWB and the community leadership role. It gives, in theory, the local authority flexibility to do things that couldn’t have done before. ... the recent one up here had clear and measureable benefits for the local people, and we the council got a lot of credit for doing something that councils don’t normally do.

However, as well as recognising local authorities’ community leadership role, the examples of Authority A’s usage of the PoWB have also drawn attention to the fact that most of the usages of the PoWB were to promote economic well-being in the area. In recognising the negative effect that unemployment would have on the quality of life of local residents, Authority A promoted well-being through pro-actively combating unemployment.

### *Enhancing autonomy, rebuilding local authorities capacity*

Although Authority A is relatively new, due to a recent restructure, and large – both organisationally and geographically – its provision of public services is seen by officers and members as core services *plus community leadership*. The authority would look to intervene where it saw market failure that would negatively impact on local communities.

Officers and elected members interviewed reflected that whilst the authority would be a provider of core public services, authority A also adopted a moderately interventionist approach to community leadership due to the attitude of the senior management team and the elected representatives. One senior elected member argued that the use of the PoWB is motivated by the culture of the authority citing “it comes back to ‘has the organisation got the appetite’. Is it prepared to do things a little bit different and take a risk?” Equally, authority A roughly follows the traditional model of local government as the provider of public services – which seems to reflect the additional or ancillary status that is attributed to the PoWB. One senior legal officer reinforced the argument that the PoWB has an ancillary status, stating that:

“a lot of the stuff that we do currently has a basis in statute, the economic development stuff and social care whatever, you have usually got a power you can do it under. It’s only when you haven’t that it [the PoWB] becomes valuable ... it’s not on the tip of everybody’s tongue.”

All of the interviewees in authority A concluded that the model for local government was to fulfil a community leadership role, particularly a *proactive* leadership role. As previously highlighted the PoWB enshrines local authorities’ community leadership role, by allowed local authorities to exercise their autonomy. Although even with the PoWB, the level of local authority activity as community leaders ultimately rests on the ambition of the authority.

However, whilst agreeing with the broad sentiments that the PoWB allowed authority A to exercise greater operational flexibility and exercise their autonomy, another officer placed some caveats on usage of the PoWB.

“it [the PoWB] does allow us to be creative but only at the margins. When we’ve come to a brick wall in terms of other legislative permissions, you start thinking outside the box and I think a lot of the examples you’ve got is people thinking outside the box.”

Whilst there is no standard model local authority or method for public service provision - due to local geographic, organisational, or demographic variation that could impact on service requirement - interviews conducted with officers and members of authority A seem to reflect that the authority would provide ‘community leadership plus’ (i.e. the core public services plus additional community leadership positive interventions), therefore fulfilling a broader strategic leadership role. However, eventually, the organisational capability and ambition of authority A may have been the deciding factor that resulted in the *proactive* approach to community leadership. As previously identified, generally, legal officers are pointedly blamed for being the cause of inaction and in the case of authority A. Interviewees suggested that the chief legal officer (in authority A) did not belong in that category. Moreover, generally, officers and members realised that local authorities had to be more innovative and ambitious in their approach to community governance but that this would remain to be dependent upon local authorities’ “appetite” and senior officers’ risk aversion. One elected member argued that:

“it’s about taking the handcuffs off, if central government is honestly committed to localism let us get on with it! Don’t overburden us with regulation and performance management that forces us down a way our communities don’t want, and we don’t want.”

Furthermore, this organisational ambition would have to be matched by a political ambition that would enable local authorities to respond to external challenges and fully adopt their community leadership role. A member of the senior management team within authority A argued that the onus is on authorities to step forward, and break free from risk averse attitudes.

“at the local level I think we probably need to be a bit bolder. We tend when we’re under pressure to act in the safest way. It’s scarier to take risks, if you’re in a blame culture you won’t take risks. In this authority,

we're trying to encourage taking controlled risks - not invest in bank-type ideas – but let people have their head. Let junior staff come up with ideas, let middle managers come up with ideas, and enable and empower them to do it ... we do have a paradigm shift to take this forward. Whether or not we'll achieve that I don't know, it's not something you achieve overnight, but I think if you're serious about localism let us get on with it.”

The findings from officers and elected members interviewed in Authority A, suggests that the local authorities' role related in part to their ambition (i.e. willingness to take risks) and the degree of independence from central government (i.e. local authorities ability to exert autonomy). A senior policy officer reflected that local authorities' role was to provide community leadership, however sometimes that leadership took communities to places that they “don't want” due to central government interference. The types of services provided by authority A could be seen to be non-traditional (because of their proactive attitude towards intervention in local communities) and largely undefined; although still providing a community leadership role. As authority A is a large unitary authority, which may impact on the level of service provision because of the available resources and organisational capability, some officers felt that made the authority more reliant on community (or potentially tertiary level) infrastructure.

“look at a map, we're huge. We're spread all over the place and rely on that community based infrastructure, but of course even at that level they may not get it right, it depends on the culture and leadership.”

#### *‘New’ Localism or new ‘Localism’*

Although much of the debate on relations between central and local government focuses on the centralist vs. localist implications, officers' and elected members interviewed in authority A reflected that neither really was the case. One senior financial officer from authority A argued that:

“the big debate at the moment is that central government are talking a lot about localism but actually imposing quite a lot of constraints. Specifically transparency is the latest one; we've got to make all this information available, so on the one hand they're talking about localism,

which you would think would be generated at the grassroots level, but they are still specifying quite a lot of things at national level. I don't think anything they're doing enhances or detracts from the PoWB.

Wilson and Game's (2006) more complex model that allowed different levels of localism and centralism to exist simultaneously is closer to officers' and members' perceptions. A multi-polar model of intergovernmental relations might be more appropriate that enables government departments to simultaneously exert varying degrees of localism. One officer cited that this was because "you've got SILOs right the way up ... there's a huge element of right hands not knowing what left hands are doing". While one senior policy officer reflected that there was a disjunction between the rhetoric and the reality;

"despite the rhetoric about localism, and taking the handcuffs off enabling people to respond locally, I don't know if we're seeing that or we will see that in future. At the end of the day somebody has a bee in their bonnet and makes some money available for X so it has to be spent on X, so the fact that you might want to get that and spend it on Y is irrelevant. So there is a disconnect, a mismatch between real localism and the fact that there are still central dictates. There's a million ways in which we get centrally controlled."

One member of the senior management team highlighted the opportunity for autonomy within the current system of central government control. The officer highlighted an example from the authority, which seems to reflect that local authorities have enough discretionary powers to exercise their operational autonomy if they wish but that authorities lack ambition to use their powers. One member of the senior management team explained that

"we're looking at things in tandem with the 2003 Act, having our own companies for generating energy for example because we have all the natural resources up here and I think we would have been looking at the PoWB along with the 2003 Act if that wasn't sufficient to do that but the General Power of Competence in the Localism Bill will presumably come in before we can get to that point."

The same senior officer also recognised that (at the time the research was conducted) the Localism Bill contained 142 regulatory powers for the Secretary

of State, which may affect the degree of overall localism that the Bill would enable.

“there’s a lot more that central government could do to let go but none of them have the courage to do it, because of the inequalities that they perceive that might create ... General Power of Competence, I mean how general is it going to be. They’re not really prepared to let go that much.”

Therefore, to an extent, the officers and members interviewed in Authority A acknowledge that central government does exert control (whether through performance metrics, funding control or regulatory powers) over local authorities. However, officers and members interviewed reflected that the level of control was also varied by the degree of subservience exhibited by particular local authorities. One senior legal officer from authority A argued that “I’m not sounding jaundiced here but in a sense any local authority worth its salt wouldn’t need a PoWB”.

### *Future Challenges*

The biggest potential challenge to local authorities’ community leadership role was perceived by one officer in authority A to be the reduction in local government expenditure. The officer outlined two opposing schools of thought.

“One is if you’ve being really cynical, if you withdraw money, if you withdraw finance, actually there’ll be nothing to fill the gap so it just won’t happen. The other school of thought would be, let’s say there’s a youth club, the council is providing the youth club and put money into it. This youth club is on a Friday night but now the council can’t afford it. Actually there’s so much demand there and so many people want it that somebody steps into the breach and says ‘we’ll do it for you’. In some places that will happen and in some it won’t. The places it’s most likely to happen will probably not be places like this one. It will be people of means, who have the time because they’re not working. It’s just what’s called the ‘usual suspects’, who are people who can be school governors. It’s usually the people of means who have that sort of time, the articulate middle class, some of that will happen but in others that won’t. It’s not because, in some areas they’re not as civic minded, it’s just because they’re trying to keep their head above water because of their economic situation.”



Another officer was slightly more optimistic about the perceived challenge that the reduction in council expenditure presents to local authorities, and recognised that the reduction also presents local authorities with an opportunity to act more innovatively. One senior financial officer from authority A argued that:

“the scale of the cuts we’re all going through clearly limits our ability to act across the board but also it’s a bloody huge nudge – to think creatively. Not just the mantra of shared services, cutting senior salaries, because that’s not the solution. It can be part of the solution but it’s not ‘the’ solution”

On the relationship between the impact of the spending reduction and local authorities’ use of the PoWB and their wider community leadership role, one officer challenged the narrative that the spending reduction automatically meant that local authorities would be doing fewer things.

“one assumes we’ll generally be doing less of everything but there’s no reason why we wouldn’t look to use the PoWB just because the funding is going down.”

Another officer further challenged the automatic (reductionist) presumption, explaining that the ongoing challenge facing local government was an internal cultural issue that shapes local authorities’ activism, instead of the current challenge offered by the reduction in local government expenditure. The same officer further highlighted that the severe reduction currently facing local authorities actually presents an opportunity to further develop councils’ community leadership role.

“I think it’s the cultural issue behind the organisation not the legal power, is the organisation minded to try and do things? So overall, I think it’s one of the best powers we’ve probably got.”

Equally so, another officer – and an elected member in authority A – reflected that local government’s weakness is the result of a longer term strategic problem. One senior elected member argued that “it varies from authority to

authority, but if you raise 25% of your own income you're doing well these days- we're so dependent on government grants". However, the elected member interviewed carried this reflection further, citing that the reduction in local authorities' expenditure may ultimately prove to be a false economy.

"I call it lumps in the carpet. Press it down and it creates an inefficiency somewhere else, particularly in the north-east. I'm sure people have told you, all the jobs we're having to take out there is nowhere for them to go. So we are just creating unemployment, and that's a huge cost to the state. So I think there are flaws in the strategy so that's bound to affect that."

Whilst the current reductions in public sector expenditure represent a contemporary challenge to local authorities, in the longer term it may not represent a critical threat. This would be especially accurate if the underlying issue of local government finance represents a more strategic threat to local government autonomy.

One interesting note throughout the research conducted in authority A, is that the Local Authorities Mutual Limited case was not made reference to as an impact factor on their use of the PoWB. The main factors from officers' perspective were the organisational culture inside the authority, and the political and managerial will to drive the use of the PoWB. The interviews conducted in authority A reflected that officers and members recognised that there were different degrees of localism, and that the PoWB represented a 'catch-all power' that offered local authorities greater operational manoeuvrability. However, officers reflected that activity from the centre (whether the reduction in public sector expenditure or the imposition of performance metrics) served to reduce the level of strategic autonomy allowed by the PoWB.

A number of officers, however, also reflected that individual local authorities could seize the initiative from central government - working within the same constraints - in order to increase their own operational autonomy. This seems to reflect the 'choice within constraint' hypothesis (Pratchett and Leach, 2004). This finding seems to suggest that although authorities have similar degrees of

flexibility, some authorities may exert more autonomy than others due to individual officers or members efforts to pursue localism. Furthermore, this implicitly highlights the low level of awareness in some local authorities and suggests that certain authorities may have more operational discretionary power than they recognise – due to their low level of awareness.

## **Chapter 6 - Case Study findings: principal authorities**

### **Local Authority B**

#### *The local context*

Local Authority B is a small Metropolitan Borough Council in the North of England. In 2008, in the Comprehensive Performance Assessment, the Audit Commission judged that the authority was improving strongly in comparison with other councils, and that it demonstrated a four star overall performance. The authority covers a range of territory including coastal and urban areas, developed industrial areas and green belt land. Whilst the range of landscape varies significantly, the geographic size of the authority is a small with an area of less than 25 square miles. Created by the local government reorganisation of 1974, the authority has its main administrative centre in the largest town, with several community centres in the surrounding smaller towns. At the 2001 Census, the population served by the authority was 152,785 people, of which 2.7% were from a black and minority ethnic background – above the regional average. Prior to the financial crisis in 2008 and the subsequent recession, the area had employment rates below 67% (NERIP, 2009) – below both regional and national averages. Furthermore, at the same time, the unemployment rate was above regional and national averages above 9% (NERIP, 2009).

Traditionally, the local economy was built on a firm bedrock of heavy industry i.e. ship building, coal mining and manufacturing. With the decline of heavy industry, the basis for the economy has shifted and newer industries - notably the services sector and tourism – have been attracted to the area. However, heavy industry still remains a considerable proportion of the local economy, specifically high-tech manufacturing and precision engineering. The consequence of the traditional emphasis on heavy industry is the development of urban areas that now face social tension and levels of deprivation, and have historical problems regarding the levels of unemployment and benefit claimants

in the area. The average Indices of Multiple Deprivation rank, for the area, was 38 in 2007 (DCLG, 2007).

### *The political context*

The authority is controlled by a Labour majority; traditionally, there is a strong swell of Labour support in the local area. Elections usually return Labour candidates with a significant majority; therefore, this could create a strong working majority for the Labour group in the council chamber. Below is a breakdown of the political groups in authority B (figure 10)

Figure 10: Breakdown of elected members of authority B by political party

Total number of Councillors	54
Number of Labour Councillors	36
Number of Conservative Councillors	3
Number of Liberal Democrat Councillors	2
Number of Councillors from other political parties	13

The context (generic and political) of the authority is significant because of the impact and influence that this context has on the abilities and capabilities of the authority. The size of the authority may prove to be crucial because it could enable activity to be more focussed on specific groups or specific areas, or could enable a joined-up approach that might prove more difficult in a geographically or organisationally larger local authority. Politically, the context of the authority is significant due to the dominance of one group. If the PoWB is found to be a partisan device then the dominance of the Labour group in authority B could prove to be significant. The dominance of the Labour group - as it is used to wielding considerable power and decision-making responsibility - may offer political stability that could increase the usage of the PoWB.

### *Awareness of the PoWB*

Within the authority, overall awareness of the PoWB is mixed. Awareness of the origins of the PoWB was also mixed. Some policy officers stated that “we

thought of it as happiness ... we weren't actually calling it well-being at the time, so we actually set out to make our residents happy". Some legal officers believed that the broader context is "much more difficult to pin point" but that the PoWB "widened our scope to those sorts of things [that other people meant by well-being]" and that it allowed "a means of giving local authorities more flexibility in, in them being able to develop policies or programmes".

In some cases, awareness of the PoWB was extremely limited. Other cases seemed to exhibit confusion over the precise nature of the legal Power that was used to enable projects. One policy officer highlighted the differing levels of awareness about the PoWB, and other officers' confusion over its usage, stating that:

"I rang our finance and legal departments yesterday and we don't think we actually had to enact anything; just actually saying that we had the Power was enough"

The awareness of the PoWB itself was high. However, one finance officer acknowledged that awareness of the PoWB probably had been higher in the past "if you'd asked eight or 9 years ago the answer would have been 'oh yes we know about that', I don't think that awareness will be as high now. I think passage of time will have dissipated that". The relatively high level of awareness was most likely the result of a high-profile communications strategy within the council to raise the profile of the PoWB and its uses and, a policy officer from authority B recognised that:

"We did a lot of work to make sure that every employee understood what our vision was. You could walk down any corridor and see details about our vision. Culture and well-being is right at the top of vision, so whenever someone looks at what the council's setting out to do they're going to see it, hear it, and know it"

The authority's internal communications strategy was built upon the national fanfare that accompanied the original launch of the PoWB.

"I think when it came in with a bit of a fanfare, you know we're going to have these well-being powers and the then Secretary of State, I think it was John Prescott, they said you know this is great, new powers for local authorities"

Furthermore, officers seemed to be in favour of the PoWB generally. One senior policy officer from authority B argued that “I would say that you know as officers working within the authority they are generally aware of the existence of the Power”. However, some seemed unsure as to the usefulness of the PoWB itself. One member of the senior management team stated that “since the actual powers of well-being, if you look through policies and reports (certainly here) it’s not mentioned anywhere”. Whereas, a legal officer from authority B recognised that:

“it’s difficult isn’t it, because that sort of use of the Power [in general terms] is unlikely to ever be subject to scrutiny ... I’m not saying they go through the thing and it’s quoted into a cabinet report saying this is the Powers bit, but nobody is ever going to scrutinise that”

Nevertheless, one use of the PoWB by this authority was challenged by the Audit Commission on a value for money basis. The use of the PoWB related to a high resource project that trained local secondary school teachers – in the USA – to promote emotional resilience in classrooms. The basis of the Audit Commission’s challenge was that authority B did not provide a cost-benefit analysis alongside the project. One senior policy officer from authority B outlined the project.

“When we did this work, we were challenged by the Audit Commission. What they were saying to us was that they wanted a financial appraisal of our well-being programme and they wanted to know why we hadn’t done a standard project assessment. We were spending this money, but really had we done a cost-benefit analysis? So we said to them that we were using the powers of the Local Government Act 2000 – we were using the Well-Being powers, but actually we’re not sure that we ever did actually use the powers. We think that we did things that we were always allowed to do, so we frightened the Audit Commission by saying that we were using the PoWB. So it actually helped us – in a way – to remove the burdens of the Audit Commission. So where they were regulating us and saying ‘you’re spending X million on this programme to send teachers to America to learn and then teach emotional resilience, where’s your cost-benefit analysis?’ We actually said ‘well in the 2000 Act it says that you can do whatever you feel necessary, so please go away’ and they did.”

Officers were well aware of the Local Authority Mutual Limited ruling and the challenge to the basis of the PoWB, as well as the challenge that they faced from the Audit Commission. However, the awareness of elected members of the PoWB was not as in-depth or wide-ranging, although awareness of generic well-being – and well-being as a policy objective – was high, specific knowledge regarding the PoWB itself was lower than it was amongst officers.

#### *Attitudes towards the use of the PoWB*

One finance officer summarised his attitude towards the PoWB as mixed, stating that:

“I suppose I understand it to be a means of giving local authorities more flexibility in developing policies or programmes which can support the community where they don’t have any specific statutory powers, to allow them to go into other areas of service provision which maybe they’ve not hitherto been involved with. I think the key theme is flexibility, if it’s something they feel is of benefit to the local community and the local area, then, as long as there’s not any other law prohibiting them from doing it then they should be allowed to do it so I suppose it’d change the default position from being ‘we’re setting you up as a public body and here are the things you’re allowed to do and here are the things you’re not’ to the default position being ‘we’re allowing you to do everything, unless there’s something specifically saying you can’t do that.’”

The attitude of the officers towards the PoWB seems not to be that it represents a ‘power of first resort’. The PoWB seems instead to have (unconsciously) enabled the local authority to act or intervene in areas that it traditionally wouldn’t intervene in. One senior legal officer argued that the PoWB “does, I guess, underpin a lot of the things the council does but perhaps not always recognise what it’s doing”. This seems to suggest that the PoWB allowed authority B to stray out of their traditional comfort zone, and engendered a shift in the culture of the local authority. Although this influence is debatable amongst the officers themselves, one policy officer stated that:

“Maybe if we’d been a smaller authority – not a metropolitan authority – then there may have been something there that they might have had to do, but being a metropolitan authority everything seems to come under



our remit anyway. So I don't think we were doing anything that we wouldn't have been able to do anyway"

The PoWB does seem to have represented a power that enabled or empowered local authorities to act, and therefore it would seem that officers did not regard the PoWB as a power of last resort. Equally, it was not regarded as a power of first resort either, merely as a supplementary power that could back-up existing statutory powers – if required. So officers in authority B seemed to regard the PoWB as an ancillary power that supported the authority's activity or provided assurance.

"There were obviously issues with councils abilities to take actions that they wanted to. The example in the planning context which is often quoted is, I know there's a separate power for charging for services, which has come in, but it's an example which authorities got tripped up on, which was charging fees for pre-planning application advice."

Officers also recognised another factor that may have impacted on the adoption of the PoWB in authority B. One legal officer summarised the (sometimes contradictory) nature of local authorities' operational autonomy.

"I mean we've never been prevented from doing something because we don't have the powers, thinking about local examples, councils have always been encouraged to think outside the box etc and get into other areas of business, but we are hamstrung by requirements on not making profit, not making surplus, and you think 'well why not, if it's there and it's cross subsidising other services that the council is providing'. So, there's the element of the arm still a little bit up our back and we can't act in a truly commercial manner because we can't make a surplus if we're providing another service. We can cover our costs, but we can't make a profit."

Officers' perception of discretionary powers available to local authorities, and local authorities' legal versus operational autonomy was emphasised by one finance officer stating that "we don't have full flexibility, and maybe perhaps we shouldn't because we're a publicly funded body. You can't say behave on one way, but actually we're going to constrain you in others".

The views expressed by legal and finance officers seem to highlight a level of uncertainty regarding the operational use of the PoWB; a degree of uncertainty that could have negatively affected the adoption of the PoWB. This is particularly the case if local government officers and elected members do not view powers as the tools for innovation in the traditional manner, but instead perceive a range of factors that facilitate innovation in local authorities. The majority of officers in authority B broadly agreed with the proposition that most non-legal local government officers do not consider vires or their local authorities' legal ability to act when considering a specific policy or project. One senior legal officer argued this point, stating "I think, at the end of the day, it's not something which at the moment I think exercises the minds of most officers, is the reality". Whilst it could be said that authority B had been traditional in its approach to service provision (i.e. the authority undertook projects that were statutorily required), this is not currently the case in the authority. However, whether this change is a consequence of the PoWB or the result of ambitious leadership within the authority remains uncertain. While the PoWB was intended to represent a power of first resort – that was intended to engender a greater degree of confidence (and autonomy) in local government – some of the attached constraints, in fact, had the opposite effect. One senior legal officer from authority B argued that the PoWB was sometimes contradictory, stating that:

"We want you to do everything you can, you can do anything that's going to benefit the community but we are still going to constrain you on what those things are. So mixed messages, and mixed messages then result in people not doing things because they think 'hmmm, can't do that, I don't get it, I don't understand what'll happen"

This recognition of the impact on the PoWB was further refined by another officer. This officer highlighted that - leaving the PoWB aside and considering the legal guidance on its use - the guidance "doesn't really take you anywhere".

"It tells you in broad terms that you can and can't do but doesn't really give you any practical examples. There may well be a lengthy government document which says these are practical examples of the use of the PoWB, I don't know."

## *Policy Focus*

The broad focus of the PoWB seems to be that of an enabling power, rather than a power specifically for a policy area (e.g. economic regeneration). The PoWB, in the broader context, acted as an enabling power so that authorities could act in areas that traditionally they didn't have the responsibility for - specifically within the health and well-being agenda. The PoWB allowed this local authority to intervene to make local residents happier.

"We weren't actually calling it well-being at the time, so we actually set out to make our residents happy ... it was right about that time there was some negative publicity about 'happy-clappy councils'. So we thought long and hard about it and came up with the term well-being – to us it was the same"

Although the local authority officers classified their intervention under the health and well-being remit, a distinction was added

"it was about residents being happy so it wasn't just their health or physical health, it was also about their emotional health. We started looking at health and well-being because that's what we found that people were looking at, but really when we looked under the surface it was really health; that's what they were taking about".

One elected member from the authority highlighted a potential misunderstanding between local and central government over the exact final objective of the policy agenda.

"I think there's a lack of understanding from the national perspective about what well-being is, what has it come from. Has it got a product that comes from the end of it? Is the government saying that if everyone's feeling happy healthy and content we'll get more work out of them? Or is the government agenda just to make everybody feel healthy happy and content?"

However, the PoWB was adopted in a number of other policy areas to enable the authority to intervene in areas that traditionally they may not have been involved in. Whilst other examples of uses of the PoWB are not under the

health and well-being remit, the rationale behind other policies and projects was (ultimately) to promote the well-being of local residents. One senior legal officer from the authority argued that:

“the council has a number of employment schemes, business support schemes, where it engages with third party providers to support getting people back into work or starting new businesses. I think this is one area where the PoWB helped the council its work on partnerships. Through one partnership, the council’s acting as a developer on new buildings on estates on the riverside.”

The broad-brush nature of well-being promotion that the PoWB allowed, was summarised by one of the elected members; citing that the authority:

“had a lead member for culture and well-being. We had lead members doing different elements of well-being, like emotional resilience then we changed the portfolio holder and we had a new elected member for culture and well-being, who understood it very well. She helped everyone understand what it was all about, which if I go back was about happiness. The things we were doing weren’t about emptying bins and providing services for residents but about doing things for their enjoyment so we provided a lot of events – free events – that we did, which again we didn’t have to they aren’t statutory but the idea is for community engagement.”

The PoWB allowed the authority to intervene to promote well-being, or happiness, (i.e. to act in areas that traditionally local authorities had no authority to act in), and it seems to be perceived by officers and members as a power of assurance. This allowed the authority more flexibility to act in non-traditional areas. One senior elected member argued that the PoWB enabled the authority to engage in actions that they have no statutory responsibility for – such as promoting the well-being of local residents “on what we do to develop the well-being of local people”. Importantly, officers also highlighted the limitations of the PoWB; specifically, restrictions that have been placed on local authority activity as a result of using the PoWB (i.e. the availability of finance and the impact that the LAML ruling had on local authority use of the PoWB).

“The problem with LAML, the purpose behind was the provision of insurance, in broad terms. Whereas if you were doing a company

that was for legal services, as long as it's remit, but were the companies there, were the local authorities in setting up LAML doing something they otherwise wouldn't do – basically provide insurance. Whereas legal services, they already provide legal services ... it's a thing that would be happening anyway."

One finance officer accepted that the LAML judgement had had a detrimental effect on local government discretionary activity, but stipulated that the judgement itself was not a judgement on the PoWB. The LAML case and subsequent ruling acted, instead, to frame the boundaries of the PoWB, which over the longer term may increase the adoption of the PoWB.

"I think it's still the case from a legal standpoint, ok it wasn't a well-being judgement on LAML, but at the same time it doesn't mean that the power's not there and can't be used. If it's a smaller project you might think let's just run the risk on the basis that what's the likelihood of it being challenged. But, I can see, certainly for things involving any significant expenditure or reputation that's a major issue."

Another officer highlighted that the availability of resources (specifically finance) would ultimately have affected the level of intervention or activism within the authority, citing that "finance oils all the changes - there's not much you can do without resources ... I think if there'd be more resources there yes, we would have probably done more." However, something much more fundamental to the adoption and usage of the PoWB was found to be lacking. One officer stated that "I'm not really sure – at that time – anybody understood what the Power actually was and how to use it", which highlights the fundamental lack of understanding about what the PoWB actually enabled. In a more theoretical sense, it also offers an insight into the role of local authorities and particularly the relationship between central government and local authorities.

### *Enhancing autonomy, rebuilding local authorities capacity*

The model for local government in authority B is seen by officers to be very particular, very defined and unlikely to follow trends from other areas of the country "to be honest with you it's unlikely many other authorities will follow that model of outsourcing everything". One senior financial officer reflected that:

“this authority, which is very Labour dominated, very traditional and sort of northern, the council will be the core enabler of services rather than the provider and I think it will be that, you know in a few years there will be a lot of different external bodies who are now providing a lot of the services which were previously provided internally”

Equally so, officers identified the impact that factors can have on the role and activity from the council; externalities that could drive local authority activity in a certain direction i.e. economic or social factors. One senior legal officer acknowledged the impact that these externalities could have on local authority activity, arguing that :

“The factors that are driven by economic circumstances within the borough because as one of the more deprived areas within the region there has been a lot of emphasis placed upon how the council can act as a stimulator for the local economy. So one of the factors will be what’s a priority for the council and if the priority isn’t, we’ll provide school services, we’ll provide social care services, we’ll cut the grass, we’ll empty the bins, it it’s more than that how do you achieve more than that?”

The majority of interviewees in authority B concluded that the role of their local authority was to act as a community leadership organisation; although, importantly, there was a split between officers and members in relation as to whether this was ultimately a *proactive* or *reactive* leadership role. One senior legal officer argued that, due to the local context of the authority, the community leadership role is particularly significant, stating that:

“The community leadership role, particularly here, which is a deprived area and realistically the council, has to play a massive role, particularly in terms of local enterprise etc. It’s not going to deliver. The area is not going to regenerate itself effectively, and we aren’t going to get businesses coming in here unless we’ve got heavy local authority involvement. One example from my area is planning obligations, one of the things we try to secure now through the planning obligations process is targeted recruitment and training, having social clauses in our sc.106 agreements. So we identify targets for apprenticeships, work experience and require them to go into schools when a new development is taking place.”

It was felt that their community leadership role was accomplished by developing a two way relationship with the wider community. One senior policy officer reflected that “the community would say to us ‘help us to do this’ so that they would be able to have allotments and planting days with older people, and intergenerational work with younger people as well. So it was all about the community telling us and leading the whole”. Whilst this relationship was recognized, it was also acknowledged that local authorities - more generally - had to be more innovative and radical in their approach to governance. One senior policy officer argued that “local authorities will have to work in new ways to achieve improvement and fulfil their new place-shaping role. Incremental change is not enough”. It was also accepted that the level of ambition within the authority - irrespective of organisational capability - could affect the level of local authorities’ community leadership i.e. that of perceived vulnerability of the authority to external risk. One senior financial officer argued that:

“local authorities are a bit like sheep. They always wait for somebody else to go first and see what happens ‘before we do that, who else has done it”

If this finding represents a wider trend amongst local authorities, then the impact of the LAML case on the wider local government sector may represent a mortal blow to the perceived freedoms that the PoWB offered. In this authority, it would seem that the LAML judgement highlighted some weaknesses involved in the PoWB that has reinforced the relative risk-averse nature of legal officers in the case study authority. One senior legal officer from authority B argued that “you have issues of legality. You’ve had public officials, who are naturally cautious, politicians are naturally cautious, they’re risk averse.” However, another officer highlighted that whilst the LAML judgement might have dealt damage to the PoWB and affected its adoption, the LAML scheme itself may have been a unique project. One senior financial officer reflected that:

“you take LAML, I guess, one of the things is in that maybe again to do with the size of the authorities. I’d be amazed if the authorities in the North East would have ever conceived of doing something like that. The question is probably a good one, because I don’t think it’s within the remit of most local authorities”

The recognition of the organisational size of a local authority as a factor – by a minority of officers in authority B – is an interesting finding, although it does not reflect the findings echoed earlier in this thesis regarding the levels of usage of the PoWB amongst district councils. This thesis has so far highlighted anecdotal and original research to show that the size of an authority itself does not significantly influence the degree of innovation that is exhibited. Although some of the larger local authorities are well cited for their innovation, this does not automatically imply that all larger local authorities are more innovative than smaller district level authorities. The contrary may be more accurate. Whilst larger authorities might have greater organisational capabilities than their smaller counterparts, this research reflects that smaller authorities can be more responsive and have a greater impact – albeit in a more targeted manner.

#### *‘New’ Localism or New ‘Localism’*

One officer offered the view that the relationship between levels of government was more akin to ‘jailor’ and ‘inmate’, characterising central government as creating constraints and placing ‘shackles’ on local government.

“I know there’s talk of extending this PoWB to something wider, I know it’s been mooted by the current government, but it’s really looking at those areas where there are constraints and removing those constraints. I think, as well, taking away any shackles which arise from, having to justify to outside expectorates”

One clear example of the perceived method of placing constraint on local authorities was highlighted by one of the elected members of the authority, citing that central government would encourage councils to achieve more and broaden their scope of intervention whilst taking away local authorities’ resources.

“you’re having one conversation with the government, they’re saying ‘well you can do anything you want, whenever you want, whatever’s positive for your community you can do it’ but in the next conversation ‘oh by the way, we’re taking 23 million pounds from your budget.”



Another officer within authority B emphasised this perceived level of control that central government has over local government by offering an insight into the local government finance review (commissioned by the Coalition Government after the 2010 General Election). The officer highlighted that local authorities would want more freedom from central control so that more local autonomy would enable councils to take a more active role in their communities. However, the officer also highlighted the *political* influence that local government could potentially hold over central government:

“Reviews of local finance have been particularly painful in the past, look at Layfield and Lyons, and obviously you have the thorny issue of local taxation which has brought previous prime ministers down. It’s an area where they tread with fear and trepidation because it’s political dynamite. Now you know you have poll tax and they got it wrong, they got it wrong really badly. There’ll be some little bits that come out of it, and really what local authorities would want from it is greater freedom to raise their own revenue, greater freedom over council tax greater freedom to borrow and invest using their assets as collateral and being able to keep any proceeds from local economic growth.”

This raises the question of whether the ‘shackles’ that central government has placed on local government are also *de facto* shackles on central government. One elected member of authority B highlighted that some interventions can only be successfully pursued at the local level. Therefore central government is reliant on local government, and as such, enhances the performance pressure on local authorities.

“the people want to pull the estate down. Let’s go in and talk to the properly, so we got a company to do a full interview survey of 700 houses in this part of the estate. They went in and came back, and 79% of the residents wanted it pulled down. So we pulled it down. Now we’re in the middle of rebuilding it. If you go and knock on the doors of people now and ask ‘what’s your house like’ they say fantastic. That is a sense of well-being ... that’s the yardstick I can measure it by - at a local level.”

Therefore, to an extent, central government would seem to be reliant on local government to either achieve or facilitate at the local level on the behalf of central government objectives; potentially something more akin to a partnership

model of relations than that of parent and child. However, even if this were the case, several officers in authority B have highlighted that central government would be the senior partner in the arrangement. One senior financial officer argued that “you can spend your money on anything you want but actually you’ve only got tuppence ha’penny”, reflecting that what central government offered councils was “freedom without resources”. One of the biggest operational challenges that seem to run throughout the authority is that of funding, which is (justifiably or not) perceived to be the greatest constraint on local authority activity. In the current challenging financial environment, severe reductions in public sector expenditure and local government funding may emphasise future challenges on local authority activity.

“At the moment when budgets are tight, you’ve got people saying ‘well you can’t do that’. My impression is that although the new government may bring in this power [a General Power of Competence], how much official guidance or suggestions on usage and how it can’t be used I don’t know.”

### *Future Challenges*

The issue of local government funding is an especially important one, at a time when local government is facing severe reductions in funding, as expenditure is seen by some to be the key to local authorities’ discretionary services. One officer in authority B outlined the two opposing points of view aptly, stating that:

“public bodies are going to have to become more innovative and look at different ways of doing things, using different powers to do things differently which they haven’t done before. The counter to that is then if they haven’t got the power to do it, all this regeneration stuff and Big Society isn’t going to get done. We’re going to cut the grass, we’re going to empty the bins and clean the streets, and that’s all we’re going to do. None of this wider regeneration or social stuff; we’ll do core services, statutory services. No discretionary services, no extras. The law says that you’ve got to provide a library service so that’s what we’ll do. That might be going back 30 or 40 years but that’s what some local authorities will do. Never mind about promoting economic regeneration, we just provide some services”

The two bodies of thought referred to by the officer highlight two different perspectives on the current spending reductions facing local authorities. Given

the sheer number and variations between local authorities across the country, different interpretations on current and future challenges to local government are to be expected. One elected member from authority B acknowledged that the funding reductions would limit discretionary services and local authorities' wider role in the community. The same elected member also recognised that "the engine of innovation is challenge", which was reinforced by another officer within authority B who stated that - in the longer term - the current challenge may promote innovative practices in some local authorities.

"where is the desire to innovate if you don't have to financially? If you don't have to from public expectations then you won't be innovative. I think often you get this, services get sort of captured by the provider, so who provides the services; will they want to do something differently? Why would they want to? They've been the ones providing the services for the last X number of years. So they're not going to write themselves out of job. If it clearly works, I'm going to keep doing it. Turkeys don't vote for Christmas."

The immediate nature of the expenditure shortfalls (i.e. the front-loading of the reduction in spending) may present an immediate challenge to larger local authorities, as the lack of preparation and planning may prevent them from considering new innovative service-delivery models and instead force 'salami-slicing' style efficiencies across the organisation. Therefore a structural and holistic reform of local government operations may provide a more flexible, independent, adaptable system of providing local government. However, the immediate threat posed by front-loaded cuts does not just affect organisationally larger authorities. The impact of reductions in public sector expenditure on discretionary activity in smaller, local authorities is seen to be extremely detrimental, especially in the short term. Asked whether the reductions in public sector expenditure were likely to affect local authorities' discretionary services and their community leadership role one officer in authority B said "it absolutely is for us". Another officer stated that:

"being a deprived local authority, we got a lot of money through area based grants and that's what we mostly used to fund our initiatives. So although the emotional resilience programme was very expensive, all the research pointed to the fact that we'd get benefits back from reduced

anti-social behaviour, schools exclusions and better attainment. We used our area based grant money because we said that the whole borough is deprived and we're covering the whole borough because we covered almost all of our secondary schools in it."

Reductions in the public sector are being felt further than just local authorities – as another officer highlighted: "the pressure on our partner's budgets as well is huge. The pressure on health, as you can imagine, is just tremendous". The officer continued to outline further discretionary services and special projects that the council commissioned that were continually being re-appraised to examine their value for money. In the long term, however, there seems to be a re-appraisal of local government's role in providing public services. One officer outlined that the future might see a greater (and wider) role for local authorities in public services, although this might be more of a facilitator role that delivers services via community initiatives.

"Possibly in the next four or five years if that's all implemented we're going to have a big change in the way that the local authority will operate. The local authority is responsible for social care and you've got a body responsible for health care, and within the healthcare they've got all the preventative stuff, but the local authority have got a responsibility around health needs as well so you've got two bodies who are trying to improve people's health."

In the short term, due to the front-loaded rather immediate nature of reduction in public sector expenditure, a significant risk for smaller local authorities is that - whilst more flexible in the longer term - in the interim it could lead to limited action in local communities. Officers in authority B acknowledged the Big Society agenda, and that it could lead to greater community-based action as neighbourhood groups' advance to fill the service-gap left as the government withdraws. They also recognised that the ultimate result might be wider variations in service provision as a result.

"you could argue that where services are no longer being provided and volunteers don't step into the breach, it means that there's no demand for it. It's almost like a perfect market; if there's demand for it and people want it to happen they will go ahead and make it happen. If they don't it won't; so was it needed in the first place? That's our point of view, but no I think it will - in some areas - there is an understanding that there isn't

this army of people who are going to step into the breach. So they will seek to preserve those core services that are withdrawn in other areas of the country.”

In summary, the interviews carried out in authority B have reflected that the PoWB offered local authorities greater operational freedom to conduct or engage discretionary services, but only at one level.

The PoWB enabled local authorities to do more things than traditionally they were allowed, but it did not carry any attached revenue or capital. The relationship was characterised by one officer as “freedom without resources”. From the perspective of officers that were interviewed, in the contemporary environment that includes severe restrictions to public sector expenditure, those resources (both financial and otherwise) are going to become much sparser. However, this may be a short term issue.

In the longer term, the structural reforms to local government (i.e. the abandonment of performance metrics, establishment of a broader General Power of Competence, and the scrapping of legal burdens on council operations) may engender a more agile form of local government that has a greater sense of local autonomy. While the attitude of council officers and elected members did not reflect that the PoWB represented a power of first resort to the council, neither was it reflected that the PoWB represented a power of last resort. The PoWB was perceived to allow greater choice within a system of legal shackles (the ultra vires principle) and increasing levels of constraint on local government activity.

## **Chapter 7 - Case study findings: tertiary authorities.**

The following two chapters will present the evidence gathered from the Tertiary Authority (Town and Parish Council) case studies.

### **Local Authority C**

#### *The local context*

Local Authority C is a Parish Council in the South of England. In the 2001 Census, the authority area registered a population of 4,956 with most of the population living in the main village and a number of smaller hamlets. A primarily rural area, the authority is within an area with the fifth lowest population density and the third largest land area in the region. The authority represents the closest level of local government to the community, whilst also being served by principal authorities i.e. the area is effectively served by three levels of local government (County Council, District Council and Parish Council).

As the most local level of government, the authority has responsibility for community relations and local issues working with police, principal authority officers and community groups on crime, planning and traffic issues. Furthermore, the authority has an important role in shaping the community by undertaking projects to benefit local residents, alerting relevant authorities that arise, and helping the other tiers of local government keep in touch with their local communities. Before the financial crises and subsequent recession, the economic basis of the wider area that the authority sits within, had a higher proportion of the population employed in education and health (28.8%), wholesale and retail (20.5%) and manufacturing (13%) than the national average.

Prior to the 2008 financial crisis, the authority area had the third highest number of business start-ups in the South West. During 2008, the number registered

business start-ups in the area decreased by 3.9%, slightly above the national average (3.2%). Although the employment rate in the area decreased - by 3.1% - at the beginning of the financial crisis (2008-2009), the employment rate remained higher than the regional and national averages. The unemployment rate in the area is 5.8%, significantly below the regional and national averages. A considerable majority of the area is classified as least deprived, only two wards being classified as being among the most deprived 10% nationally (ONS, 2004). In 2008, as a method of ensuring a minimum benchmark set of standards, the authority was awarded 'Quality Council' Status. The authority reached the required standard by demonstrating:

- An electoral mandate
- Qualifications of the clerk
- Community engagement and communication
- Code of conduct
- Published accounts
- An publicly-open annual general meeting, and
- By promoting local democracy and citizenship.

(Commission for Rural Communities and DCLG, 2008)

### *The political context*

The wider area, which the authority sits within, is dominated by the Liberal Democrats and the Conservative Party. At time the research was conducted, the largest political group on the upper-tier principal authority was the Conservative group, thus controlling the council. Although both parties maintain considerably sized groups on the principal authority, the Conservative group maintains a healthy majority over the Liberal Democrat group. Therefore the stability of the Conservative Party's majority on the principal authority could potentially impact on relations between principal and tertiary level authorities. Furthermore, a number of councillors that sit on the Parish Council also represent their communities on the principal authority. This is significant because it offers insights into the potentially close linkages between the different levels of government (i.e. whether a closely co-ordinated approach to a local issue is more - or less - likely to occur). However, political groups on

tertiary authorities do not operate in the same manner as political groups in principal authorities. The councillors in tertiary authorities more often act as representatives of their community and their resident's interests - rather than political actors.

The wider context of the authority offers an insight into the conditions in the local area, potential issues that might affect the community, and how the authority operates both with the community and the principal authorities. As the size of the area served and the organisation of principal authorities may affect their capabilities, inversely the size of the organisation and the area covered by the authority may affect the authorities' capabilities and priorities for local governance.

#### *Awareness of the Power of Well-Being*

One senior officer interviewed acknowledged that, whilst awareness of the PoWB was high in Authority C, usage was less widespread across the sector, stating that:

“It's a bit disappointing in terms of the extent of usage. I don't think you'll find that many authorities have used it proactively. As for the reasons for that, authorities are probably risk averse.”

One of the elected members of authority C noted the moderate level of awareness about the PoWB amongst officers and members of tertiary authorities. This further highlighted the benefit the PoWB has brought to local councils over the previous discretionary power, citing “there is a substantial overlap with the old Section 137 [Local Government Act 1972] ... but it's not geographically or administratively restricted like section 137.” Whilst the simplification of local authorities' discretionary power was welcomed by this member, across the sector, the simplification may have created additional uncertainty that could have inhibited the use of the PoWB. However, another elected member outlined an example of a project that did not use the PoWB as the discretionary power (even though it could have been). Another power –



devolved from the principal authority – was used. The elected member seems to outline a scenario that both highlights awareness of the PoWB, and the decision not to ultimately use it:

“The county council delegated their land drainage powers to us; we think this is the first time this has happened because we couldn’t find a precedent for it. It allows us to carry out a local flood relief scheme; they [the county council] wouldn’t do that because it’s too small. Neither would the environment agency, and nobody would ever fund it because the impact is too small but it’s ‘localism’. We decided that it was a priority and are going ahead with it. The county council is making sure that we’ve got the powers to do it; it fits in the Big Society agenda, which is the one that interests our councillors because it’s local people coming together deciding what’s best for their community. Under the PoWB of course, I suppose you could argue that we’ve got a bit of a comfort blanket under that as well.”

Although extremely innovative, this scenario seems to highlight that whilst elected members and officers are aware of the PoWB, it was not needed because the authority already had the discretionary power (albeit devolved from another authority). This lends credence to the hypothesis that local authorities have more discretionary power and ability than they acknowledge i.e. not many authorities have used the PoWB because they haven’t needed it. However, this doesn’t take account of the subtler changes the introduction of the PoWB could have brought to local authority discretionary activity.

#### *Attitude towards the use of the Power*

One of the senior officers from authority C suggested that the subtler changes were as important as the flexibility the PoWB itself allowed, stating that:

“we would say, it has certainly been welcome for us over the years, it has provided more of a comfort blanket rather than anything more positive than that. I’m glad it was there rather than not there, but with all those caveats it needs to go further.”

One elected member further implied that the caveats placed on tertiary authorities’ use of the PoWB restrict its application, citing that:

“The PoWB only applies to parish councils if they are an eligible parish council. In very simple terms, to be eligible you’ve got to be a quality parish. Round here, the vast majority are not quality parishes. So this is just another complication so I think in the years ahead it’s going to be interesting to see how things pan out, because the government seem to want local groups to take projects on voluntarily, but are they going to give them the necessary powers?”

Furthermore, another elected member outlined the limitations of the PoWB itself, highlighting that:

“if you focus on Section 3 of the 2000 Act, I don’t really like this provision, it says that the power under section 2 [the PoWB] does not enable a local authority to do anything they are unable to do by virtue of any prohibition, restriction or limitation on their powers, which is contained in any enactment whether passed or made. Secondly they aren’t able to raise money by borrowing or otherwise, and a lot of these initiatives need funding. Unfortunately, a lot of these things are not black or white. You can’t actually be sure whether there’s some other limitation that’s going to get you into a legal wrangle.”

These two statements offered by elected members, in comparison with other quotes, highlight the limitations of the PoWB and the restrictions placed on its usage by tertiary authorities. Both factors could be perceived to reduce the operational effectiveness of the PoWB and the freedom it offers tertiary authorities. Another elected member stated that “at the moment this quality status is an obstacle to parish councils being able to use this PoWB”. Another member cited that the qualifiers that restrict the usage of the PoWB are uneven because “the post-hoc accountability test would only be relevant if parish councils followed the political leadership model that principal authorities do”. However, both members clearly demonstrated a high level of awareness of the technicalities of the PoWB. Nevertheless, despite the limitations and restrictions, the PoWB may have encouraged authorities to do more by providing a ‘comfort blanket’. One senior officer questioned the rationale behind the formal deployment of the PoWB, citing that authorities might not have found need to use their PoWB.

“it may be as simple as, did they need to? A lot of authorities don’t get into areas of activity where they need to rely on this. It’s probably more about

there's nothing wrong with the power but authorities need to do a bit more. I suppose, we're the exception, where we're always out there looking for a power to justify something that we're doing."

The senior officer seems to reinforce the previous hypothesis that authorities did not use the PoWB because they had no need of it, because they already had broadly satisfactory discretionary powers and freedom to act. Instead, the senior officer stated that the PoWB engendered a subtler kind of freedom by enabling local authorities to take action in non-traditional policy areas without fear of going beyond their remit.

### *Role of the Power*

On uses of the PoWB and its ability to enable discretionary activity, one senior officer noted that:

"Although the PoWB was promoted as being a power of first resort, there were of course limits on the use of the power, and some of the situations I've come across it's not been very clear whether limitations apply or not. So in a number of instances, we've focussed upon the PoWB but also focussed upon other provisions as a supplement."

One elected member echoed this finding, emphasising the ancillary nature of the PoWB and the factors that inhibits its usage, stating that:

"We've never really used it as a power of first resort, to be honest we haven't. We rely on it when we have to but, to be honest, even when we've done some projects we've relied on other legal provisions and taken advice to rely on other legal provisions – not just the PoWB."

Another elected member highlighted that – generally – while local authorities are risk averse, the PoWB might have ameliorated some of that aversion by enabling a greater sense of freedom i.e. engendering a reduction in a risk averse 'culture'. The member stated that "yes I'd say the authority is usually risk averse, I'm not sure if there's anything in the drafting to make authorities more reluctant". One member implicitly noted the auxiliary status of the PoWB

and the risk aversion sometimes present amongst authorities when undertaking projects.

“we took extra legal advice from an external lawyer just to see what we could rely on and he said quite rightly you can rely on the PoWB, but he also gave three other powers to fall back on if anyone ever challenged our usage of the PoWB; so there’s enough [discretionary power] out there that you can rely on to do this type of stuff.”

One senior officer in the authority further reinforces the position taken by the elected member, stating that “we were a bit worried about the ground we were treading on, and whether we could be challenged”, which also serves to emphasise the (self-reinforcing) vulnerable position that some authorities occupy. If authorities are naturally risk averse organisations, **and** occupy a position of vulnerability, then regardless of the implicit cultural flexibility the PoWB allows, the explicit limitations and restrictions within the PoWB would restrict its usage. One senior officer acknowledged another aspect of authorities’ risk aversion (aside from operational risk management) stating that “political instability adds to the risk”. The senior officer then further highlighted that:

“senior officers and elected members will say ‘why should I take this risk when we may come a cropper, we’ve got an election just around the corner and we may come out of office’. It so happens in this council that there is usually a big majority for the main group and we only have elections every four years, which adds to the stability.”

One elected member further reinforced the importance of political stability when pushing for discretionary projects, stating that:

“it helps if you’re going to take on a major challenge if you’ve got a good spirit of trust and confidence across the council leadership, we’re lucky because we’ve got that; we’ve had stability over the years. In other councils there’s so much mistrust [I think] they’d be really reluctant to go out and take on a new project.”

Regarding to local authorities’ powers, one senior officer implied that whilst authorities have various powers to call upon (without straying ultra vires) they

are confused. Stating “at the moment notwithstanding the 2000 Act, I actually think it’s a bit messy”, which seems to further bolsters the case for clarification of the ultra vires principle and the introduction of a new bold discretionary legal power – a GPC.

*Enhancing autonomy, rebuilding local authorities capacity*

Despite the risk aversion of some local authorities, one senior officer acknowledged that authority C might be the exception to the rule (due to the organisations’ approach to risk management, and the degree of organisational ambition) stating that:

“I think we are in some ways the exception to the rule, because we’ve got some leading members who are very keen to take on new challenges – you know even if there are one or two risks in there along the way. I think that mood is also mirrored by the officers here, who are happy to take on new initiatives. I look at some neighbouring authorities in the Midlands, they wouldn’t even think of taking on some of the sort of things that we’ve done here.

Going into further detail, one senior officer highlighted that “our corporate policy talks about greener, stronger, healthier communities and it [the PoWB] fits with all of those”. The senior officer also stressed that rather than promoting a single policy context (i.e. health or environmental policy) the authority aims to promote a more holistic approach. One elected member reflected that the role of the authority isn’t specified, stating that “I don’t think I actually link it to health as such, it’s more of a wider background”. Another elected member cited that the role of local authorities should be to provide leadership for their communities and to help to promote the quality of life of local residents, and that:

“I think we probably do the community leadership role without linking it or without thinking we’re linking it but we are, aren’t we? I mean, everything we do is a community leadership role. It should help the quality of life of our citizens; I mean one is implicit on the other isn’t it?”

Whether or not authority C is the exception to the rule as one senior officer reflected, another elected member acknowledged that “few parishes have been

active developers, they don't like going into Section 137 territory, and fewer still have gone beyond the Section 137 limitations." The elected member did place qualifiers on the previous statement, citing that "qualification is a barrier that is low to change" and that "parishes may become inhibited due to the pre-conditions [applied to usage of the PoWB] for democratic legitimacy". These quotes highlight the restrictions and limitations placed on tertiary authorities that wish to use the PoWB. Furthermore, the elected member highlighted that local authorities already possess discretionary powers that (largely) remain under-used, citing that "sc137 [and the following PoWB] applies in a relatively few cases of interest to Parishes, as broad powers already exist". Another elected member highlighted that the restrictions on the usage of the PoWB might actually represent a hindrance or obstacle for tertiary authorities, which acts to constrain those authorities that do not meet the pre-conditions that could actually benefit from the PoWB, stating that:

"I would say some of the parishes that don't have quality status could actually be more competent than some of the ones that have got quality status. It doesn't actually define a level, I suppose it's trying to define a level of competence but I don't really know if it does or not."

Another elected member acknowledged that whilst the PoWB did not represent a power of first resort for tertiary authorities (due to the restrictions and limitations), it did offer some additional flexibility when applied to certain projects, stating that "the scale of some projects would be more difficult (but not impossible) to achieve without the PoWB".

#### *'New' Localism or New 'Localism'*

Although the Coalition Government's focus is on localism and a desire to cascade authority functions to local voluntary organisations and parish councils, one senior officer distinguished between the priority and the practical reality that seems to create a form of 'directed localism'. On the distinction between the reality and rhetoric, one senior officer noted that:

“the coalition government have been very strong on localism. The rhetoric is ‘we’ll allow you to do whatever you want to do’; but having said that the first six months of the coalition government, whatever we’re into, we’ve had a lot of central dictates from CLG – every week effectively. So we’re not seeing that in practise yet, the rhetoric doesn’t match the reality.”

One elected member carried this distinction further, calling for real flexibility to operate freely rather than skin-deep autonomy – particularly during recessionary cycles that increase the requirement for operational innovation. The member stated that:

“we need the freedom to do more because in the financial scenario we’re about to enter for the next four years, we need to be as innovative as possible; we need the ability to raise money and seek sources of income that we probably wouldn’t look at before. So we need the comfort to do that because someone will challenge us at some stage because someone will say well that’s not what local government is supposed to do, but to keep viable and sustainable (as an organisation) we’ll need to do more projects, and be more innovative.”

Another elected member reflected that central government could encourage tertiary authorities to use the PoWB by easing the restrictions and limitations placed on its use, stating that central government should “remove the election based democratic test, provided that councillors communicate well with local residents and are therefore accountable for what they have done at the next election.” The elected member also reflects that central government should recognise the distinct nature of tertiary authorities, instead of being mirrored tiers of principal authorities.

“Government should recognise that a Parish council is held in the community and also that the community often turn up to argue their case. Parish councillors tend to eschew political allegiance; they do not tend to stand on a manifesto but rather as representatives.”

The same elected member also reflected that tertiary authorities could do more, specifically with regard to collaborative working with principal authorities. The elected member cited that although some joint-working projects may take more time to complete and that they could crowd out the advancement of

discretionary projects at the Parish level (which might make use of the PoWB harder for tertiary authorities), some activities such as “roads and welfare are better handled by spreading the risk over larger populations i.e. counties, districts or unitary authorities”.

### *Future Challenges*

One of the biggest potential challenges to tertiary authorities was perceived by officers and elected members to be the level of restriction or limitations on authorities’ discretionary activity. As tertiary authorities are generally small organisations embedded within local communities, elected members have highlighted that the removal or reduction of some restrictions and limitations may increase the level of autonomy that could lead to greater activism. Whilst one elected member cited that “I have not yet wanted to do something that could not be brought forward using the PoWB”; another elected member reflected that “to be honest, for the future, it would be good to have the simplification [of discretionary powers] and to be to focus upon one primary piece of legislation”. The elected member further outlined their concerns regarding local (principal and tertiary) authorities’ legal framework to provide discretionary services, stating:

“I’m not convinced that the legal framework is there at the moment to support all of these shared services initiatives. Now I have some unease about it from a legal point of view irrespective of whether it’s a good thing for all services. I think this is just one example of where the legislation needs to catch up if this is the way the Coalition Government wants to take us.”

Another elected member also highlighted the budgetary pressures on tertiary authorities; pressures that are mirrored by principal authorities, stating that:

“With the great financial pressures that councils face, I think there’s perhaps an expectation that councils will be able to operate on a more commercial footing. At the moment, they’re severely constrained and it could be that if things are loosened up partly through this new power [the General Power of Competence], you’ll see authorities taking on more initiatives – and possibly generating some income.”



One of the senior officers reflected that the reduction in public sector expenditure (directly to principal authorities) could act as a catalyst to increase tertiary authorities' activism. The senior officer also highlighted the reduction in expenditure could also enhance tertiary authorities' community leadership role, as principal authorities retreat and offer less provision, stating that:

"A lot of parishes will use this as an opportunity. You know, if concurrently we get more operational freedom, we'll be using it as an opportunity to do more. One of the things over the next four years, yes there'll be less money, but we've still got to show our community leadership role and the councillors have got to do that. I always say 'having less money isn't an excuse not to do anything; you just have to run the business differently'."

The senior officer also acknowledged the risk inherent in this approach, stating that "I mean it might be risky to do that, but then maybe we're in an era where we need to take more risks in order to deliver more projects."

## **Chapter 8 - Case study findings: tertiary authorities.**

This chapter will outline the findings from the second tertiary authority case study – authority D.

Local Authority D

### *The local context*

Local authority D is a Town Council in the Midlands. There are 134 tertiary authorities in the wider area served by the principal authority. In 2008, the population of the wider area that the authority sits within was estimated at 179,000. The area served by the principal authority has the fourth lowest population density amongst principal authorities; whilst simultaneously being the second largest geographically amongst unitary authorities. In 2008, the population of the town itself was estimated to be 11,000 (of which 99.1% of the population are ethnically white). This makes it the largest of the five towns in the county. Of the population of the town itself, 21% was over the age of 65 (ONS, 2004).

It is a largely rural and sparsely populated county, ranked as one of the least densely populated areas in England. Historically, agriculture retained a significant impact on the local economy. However, the services industry has grown significantly in recent years and now forms the largest single sector employing 66.2% of the those economically active in the town.

With the majority of the population of the wider area employed in the services sector, manufacturing and (to a smaller extent) agriculture, the unitary authority estimated that prior to the financial crisis (and ensuing depression) less than 10% of the wider area's population was out of work. In the town itself only 5.5% of the local population was out of work, 4.6% of the population are long term unemployed or have never worked (ONS, 2004).

### *The political context*

The town served by Authority D formed the largest population centre and administrative centre of a district council that was abolished in 1998 to form a new unitary authority.

The Town Council, which is a Tertiary Authority, consists of 16 councillors including a Chairman (the Mayor). The elected members are responsible for providing assistance to the officers of the authority – depending on resource and the level of activity – as well as making policy decisions, developing new initiatives and fixing the annual budget. The authority raises its budget through local taxation via an annual precept from the unitary authority.

The unitary authority, which the Town Council is also served by, is dominated by a Conservative group. As there is a high degree of political stability or dominance of a particular party, this could affect the mode of relations between the various tiers of local government. The primary function of the town council is to represent the local community and work to improve the quality of life of the resident. However the functions are not limited to this. The Town Council also holds a number of responsibilities:

- To provide a budget for the community and the provision of public facilities,
- To provide allotments,
- To be notified and consulted by the principal authority on all planning consultations,
- To provide and maintain public buildings, clocks and bus shelters,
- To light and maintain roads and public places (i.e. grass verges and lawns),
- To offer grants to community and voluntary organisations,
- To contribute financially to traffic calming measures, and
- To install and maintain equipment and establish a scheme for the deletion and / or prevention of crime.

In 2008-09, Authority D was awarded 'Quality Council' Status that has allowed the authority to utilise the PoWB. This has enabled the authority to pursue a wider range of projects.

### *Awareness of the Power of Well-Being*

As highlighted, Authority D received 'Quality Council' status in 2008-09. One of the elected members was keen to highlight that this status represented a stepping stone rather a final objective, because it enabled the authority to fully utilise the PoWB. The elected member stated that:

"we haven't rested on our laurels [since we were awarded Quality Status], but we have achieved accreditation through member and staff training, to use the PoWB to enable us to enhance our ability to promote and improve the economic, social and environmental well-being of our town and its residents – in short, we have more spending power for our community. The PoWB can be used for items or services which, previously we had no power to provide, such as health facilities, affordable housing schemes, and cycle lanes even, building war memorials, all subject to the money being available and evidence that the community wants and needs such facilities. We have been able to use our new power to enhance the curriculum at the local primary school by funding swimming lessons for the Year 2 pupils."

Another elected member acknowledged that:

"I don't think that I would want to pretend that I spend a lot of time thinking about the PoWB per se. I spend a lot of time as a councillor thinking about how best I can use my position, my authority and skills to benefit the whole community."

This acknowledgment seems to highlight that awareness of the PoWB between elected members in authority D is mixed, although one senior officer from authority D, who advises elected members on policy, highlighted that:

"There are different definitions, I suppose, [of the PoWB] but to my mind the PoWB relates to basically anything we would try to facilitate through our Parish Plan. I think it's supposed to be giving more authority to local authorities to sort of challenge them, where there might be blockages in the pipeline or central government [or the principal authority] is just stopping us doing something on the ground, it gives us that empowerment."

Another elected member highlighted that “I think the PoWB empowers local authorities to contribute to economic, social or environmental well-being ... so there are lots of policies that could contribute to that.” This statement further reinforces the finding that suggests that the level of awareness of the PoWB in Authority D is mixed. However, it does seem to have enabled a shift in the perceived operational autonomy of the authority, which has allowed elected members to be more proactive in their provision of community leadership.

### *Attitude towards the use of the Power*

One senior officer also reflected on the scale of the challenge facing authority officers (and members). The officer reflected that the problem didn’t lie with the PoWB itself, but within the relationship between different levels of government, the constraining nature of discretionary legislation and the effect that this has local authorities’ perception of operational autonomy.

“I think the principal of well-being; I don’t think there’s a problem with it. I think where the challenge is is trying to tease out where the blockages are to be honest, and trying to think differently. Local government has been enshrined in legislation for so long, it’s very difficult not to think ‘well that’s the way we do it’ ... lots of local government officers say ‘that’s that role and those are the things that we’ve been advised by central government that we can do’. It’s quite hard for us to then spot the blockages, and that’s why I think the PoWB hasn’t been taken up very much, because we sort of feel like we’re regimented by the legislation too much. It’s quite hard to unfetter your head from what would be a blockage.”

One elected member stated that one of the main factors that inhibits adoption of the PoWB is historical; citing that “I would say the one that inhibits is the one of our thinking about issues. It’s about opening up our minds to thinking ‘we can do things differently’ and ‘how we can do things like this’. We need to be more creative when we think about problems.” Another elected member also reinforced the importance of the way that officers and members perceive authorities’ level of autonomy from central government, stating that:

“We’re so wound up in the way we currently do it. It was always that we had to ask for permission [from central government] rather than just

saying 'there's an issue and this is how we're going to tackle it'. I think that's going to be a major challenge on the road ahead. I think the capacity for officers and councillors to think [would make a big difference], everybody is just so busy, just taking a little bit of time to think just how we could do it differently could make a big difference."

None of the members and officers interviewed in Authority D reflected on the PoWB's ability to act as a power of first resort (as opposed to last resort or power of assurance). The majority of interviewees reflected that the introduction of the PoWB offered authority members and officers the ability to think differently and act (more) independently from central government's oversight. The majority of interviewees (as reflected in the findings) cited that the next big challenge would be that officers and members would have to think more autonomously.

"My understanding means that the council has the power, the ability, or at least the potential to act in a way to spend money on a particular activity because that is in the best interests of that community. There are so many other ways of doing things that the PoWB is something you very rarely put to the forefront. You always look to do something in another way; I think that the PoWB is always open to personal interpretation, isn't it?"

### *Role of the Power*

One elected member reflected that the PoWB's loose framing, and the language used, offers local authorities the opportunity to undertake projects previously prescribed as ultra vires. Nevertheless the responsibility remained with authority members and officers to undertake them. He stated that:

"I don't know how many types of councils have used the PoWB. I think sometimes when a power is so loosely framed; it creates the opportunity to do certain things but it doesn't necessarily give them a very clear mandate and some places shy away from doing things that are perhaps innovative or discretionary because there is often a risk involved in doing certain things."

Another elected member also highlighted that whilst the PoWB offered a degree of assurance to local authorities; it still required authorities themselves to undertake action and shoulder the burden of risk. For tertiary authorities, the

burden and the constraints (the eligibility criteria, the democratic pre-conditions and the limitations placed on use of the PoWB) may have implicitly represented a blockage that inhibited discretionary activity. The member stated that:

“I would agree with that [the PoWB did not represent a power of first resort]. It felt like you were still having to do your homework and still having to go back and ask ‘can we do this please?’ This meant that people dared not to do it, instead they just said ‘ah no, we couldn’t be bothered’ if that’s going to put the case together, then we’ll just find another way of doing it.”

One senior officer reinforced the point that local authorities sometimes have alternative powers to rely on (besides the PoWB), and acknowledged that local authorities have more discretionary powers than some are acknowledging. However, the officer highlighted that the importance of the PoWB was that it raised local authorities awareness of what the discretionary legislation allowed:

“We have a lot of discretionary powers; the PoWB, it’s more around what the government are doing but there are a lot of things that we can do. We could set up a business before but people didn’t realise that we could. So there was a misunderstanding about some of the discretionary legislation that already existed that would allow us to do things.”

The same senior officer also highlighted that there was still an element of misunderstanding on the part of authority officers and members in some local authorities on the autonomy granted by the PoWB, stating that:

“The other thing about the PoWB is that people think there are a lot of things we can do in this; they think that we need to ask [central government] to use the PoWB. There are loads of things that came up from when we were talking about things that we’ve done in the past, and some people kept coming up and asking ‘can we do that now?’ So there’s this kind of risk aversion approach still in some parts of local government a bit.”

### *Enhancing autonomy, rebuilding local authorities capacity*

One elected member acknowledged that there was still a significant element of risk aversion in some local authorities.

“I just think that it has an element of risk attached to it [the PoWB], and that some authorities are risk averse. So when it’s innovative and it’s not absolutely prescribed, local government tends to shy away from it.”

Another elected member reflected that local authorities respond to external challenges differently and that the challenge itself prompts authorities to respond innovatively and adopt new practice:

“I think we might be looking at new ways by which we can protect some of those services because it’s when you start to lose community assets then you start to lose the sustainability of the community i.e. if there’s only one pub or shop in the village, and that’s the only thing there, and that gets threatened then you lose a part of the community. It’s about thinking about wider community assets [not just authority assets], then the council would maybe use some of its new powers, or all of its power to think differently about that challenge.”

This finding seems to suggest that officers and members’ perception of the role of local government is that local authorities should demonstrate leadership by responding to external challenges on behalf of the local community – regardless of the challenger. One senior officer underlined this finding by highlighting the opportunity for local authorities to attain more autonomy offered by the Sustainable Communities Act<sup>3</sup>, stating that:

“When the Sustainable Communities Act came out, which was another opportunity to sort of challenge this government, you could nominate functions to the selector and it was really hard to get people to think ‘ah yeah, if you were thinking differently, how would you do it?’”

Another elected member acknowledged that one of the biggest factors restricting the role that tertiary authorities play in providing leadership to their communities was the restrictions and caveats placed on tertiary authorities. The member also highlighted that this issue had a lower importance in authority

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<sup>3</sup> The Sustainable Communities Act 2007 offers a mechanism for communities and local authorities to ask central government to either act to enable them to do so, or to act on behalf of the community or the local authority. The purview of the Act is very broad encompassing anything that would increase the economic, social or environmental well-being of the area or its residents. It could include the transfer of functions, with the aim of increasing the sustainability of the area. However, action requires the permission of central government and the transfer of function is not followed by the transfer of funding (DCLG, 2008c).



D due to the relative political stability and the relative affluence of the wider surrounding area, stating that:

“If I want to raise money for one place, then I’ve got to justify it to the wider community. That’s where the concept of localism breaks down, because if an area is particularly deprived then the last place I’m going to raise it is there. That’s the weakness, ultimately, I’d have to raise money on the council tax precept – the only way I can unless I borrow, and I’d still have to raise money to fund the borrowing. If I do that, I should be judged at the poll every four years.”

#### *‘New’ Localism or New ‘Localism’*

One elected member felt that although central government has constrained local authorities’ autonomy in the past, central government is at least trying to remove some of the burdens on local government to encourage authorities to be more active for their communities. The member stated that:

“I think that what central government is trying to do is push power down to the local level to let local leaders decide what’s best for their community. Increasingly, I think the government intends to do that. I think that what government can do around the major framework is to remove some of the burdens currently placed on local government and free them up to take whatever action they deem appropriate that will deliver better outcomes for people in communities where they are. I don’t think it should be driven by performance targets or indicators, I think it should be driven by the whole decentralisation agenda. So if decentralisation is pushing down to lowest [possible level, then the Big Society and community well-being in general is about encouraging and creating the environment for people to use that power. So they’re two sides of the same coin.”

Another elected member reflected a degree of scepticism about the nature of the localism, and questioned the practicality of the universal reforms, stating:

“All governments are very good in opposition about giving people powers at local level, but as soon as they get into power they get frightened. They don’t want to lose control because there’ll always be one council that goes too far. Across the country, we are a diverse community but most politicians have never gotten to grips with the civil service, just like most politicians at the local level don’t get to grips with the officers. Ultimately, it’s about trust.”

One senior officer also queried the practicality of universal reforms. Based on the historical precedent set by relations between central and local government, these detrimentally impact on the level of authority autonomy. Although the officer agreed that empowering local government would most likely increase local authorities' autonomy, nevertheless it was a big challenge:

"It's quite hard continually making a business case to the government, especially when the government keeps saying no. Obviously for the parent organisation, it's easier to have a single blueprint across the country. Even though the mantra might be that one size doesn't necessarily fit all, it becomes more challenging for them to manage so perhaps they wouldn't want to set a precedent that would then lead to other variations in other areas."

### *Future Challenges*

The biggest challenge perceived by authority D officers and members that offered a threat to tertiary authorities specifically, and local government more generally, was that of officers (and elected members') mindsets. One senior officer acknowledged that the reductions in public sector expenditure could act as a catalyst to alter local authority officers and members views on their abilities:

"I think that the public sector cuts will make a difference because the focus is much more on trying to get into the preventative phase. Local government has traditionally focussed on dealing with or solving problems that have emerged from a set of circumstance ... so you're not necessarily dealing with a problem as such but trying to pre-empt the problem and bring the intervention further upstream into the chain and I think that [catalyst] will help authorities to think about well-being in a different way in the future."

An elected member (whilst reinforcing the point made by the senior officer) also highlighted that central government – after empowering local authorities – needed to allow authorities to operate freely without restriction. The elected member stated that:

“Well for central government to get out of the way is a big one; to get out of the way to allow communities and authorities to get on with it will be the measure of success. I think that the public sectors cuts will be a catalyst, to challenge the way that officers and members think, the challenge of doing that’s sometimes to find an invest to save approach.”

Another elected member also stated that central government needed to allow local government to operate but offered local government finance as an example, stating that “we wouldn’t need a lot of money. We’re not talking about millions. I could give an example but in general terms it requires a tweak here, a tweak there and a little encouragement then getting out of the way and letting people fly.” Another elected member also highlighted the wider challenge of developing a joined-up approach to the provision of public services. Despite the reductions in expenditure that each individual authority or organisation is facing, this may result in more efficient public service provision that offer wider savings to the public purse. The member stated that:

“It might not be the council that makes the saving, it might be another public sector agency but it would still be a saving within the area and within the public sector. So that’s a challenge about pooling budgets and how creatively we think about it. So for example; we might spend twice as much on gritting the roads next winter because we recognise that the hospital bill has been too high this winter, it’s all our investment but it’s actually the hospital that makes the saving.”

Overall, the greatest perceived challenge (and equally the greatest opportunity) by authority officers and members is that less intervention is needed and more empowerment and encouragement of local authorities to exercise their autonomy. One senior officer surmised that governments are increasingly looking towards local authorities to be active, even if they don’t always allow them to be so, stating that:

“I do think it’s tied very heavily into the Big Society and creating the opportunity for people to be the best that they can be. So that they can step up to the plate and come up with creative, innovative solutions that will enhance both well-being and place. Not just economic well-being, but emotional well-being and environmental well-being. It’s a huge agenda (and a huge opportunity), and I think it sits very much within the Big Society.”

Increasingly all the officers and members in authority D acknowledged that local authorities would have to do more, and be more innovative in the future. Equally, one senior officer identified that the communities' attitude towards greater localism would shape their local authorities' degree of activism.

"I think the other bit of it will be how much the second wave of the devolution, local government giving powers to local communities. It will be interesting to see how much appetite there is out there from the communities themselves to get into this community right: the community right to build, the community right to buy, and the community right to bid for services. it could be really really positive, it could become so popular that it soaks up a lot of council energy and time, so that we lose that bigger picture ability about some strategic issues – just because of authorities' capacity. It will be interesting to see how that dynamic plays out."

**(Figure 11) The PoWB: Key lessons for a future discretionary power**

Key themes	Principal Authorities		Tertiary Authorities	
	Authority A	Authority B	Authority C	Authority D
Awareness of the PoWB	High awareness of the PoWB; senior officers had previous experience of using it.	High awareness, wide interpretation by senior management team and elected members.	Moderate awareness, less widespread across tertiary authorities.	Moderate to low awareness. Interviewees had mixed opinions on PoWB but very narrow interpretation.
Attitude towards the use of the PoWB	Broadly enabling power, significant inhibitors prevent use.	Gave authorities more flexibilities, did not act as power of first resort	Subtler change, restrictive caveats on tertiary authorities limit PoWB adoption	Encouraged pro-activity and authorities to act differently - even if reality much different.
Use of the PoWB: policy focus	Enabled intervention, slippery concept so no defined policy area.	Enabling power, within health & well-being, but confusion over the concept – what is well-being?	Enabling discretionary activity, but not power of first resort. Ancillary power, with confusing basis (well-being).	Not a power of first resort, an ancillary power, but encouraged action previously ultra vires.
Has the PoWB enhanced local authorities' capacity?	Enabled proactive role, interviewees' recognised authority already had the 'appetite', PoWB acted as ancillary power.	Interviewees recognised authority responsiveness to externalities; PoWB had significant impact on changing attitudes to 'what the authority did'.	PoWB enabled subtler shift, authority started engaging in non-required duties not linked to previous powers or duties. Subconsciously, PoWB enhanced capacity.	PoWB did not enhance tertiary authorities' capacity. Limitations and restrictions 'shackled' authorities, reduced capacity.
Has the PoWB enabled genuine local autonomy?	No, significant difference between rhetoric and reality.	PoWB has not enabled greater autonomy, <i>de facto</i> restraints limit activity	Distinction between rhetoric and reality. PoWB encouraged ambition but only 'skin-deep' autonomy	Mixed autonomy, did not enable universal freedom. Whitehall & principal authorities want to retain control.
Future challenges to local government and well-being	Reduction in expenditure	Expenditure is key, acts as key to discretionary services and mitigating authorities risk aversion	Limitation and restrictions block significant proportion of discretionary activity.	Organisational blockages to PoWB adoption.

## **Chapter 9 – Key findings: analysis of the case studies**

This chapter will draw together the key findings collected from the four case study authorities, and offer a thematic evaluation of the evidence. Combined with data drawn from the scoping study interviews, these findings will offer insights on: the relations between central government and local authorities, the wider implications of the role of local government, and use the original data on usage of the PoWB to outline a contemporary local government typology for discretionary activity. These findings will contribute to the current knowledge gap and address the research questions that emerge from the key aims of this thesis. The research questions were:

- To explore the awareness of the PoWB, and the discretionary role it provided local authorities,
- To establish what impact the organisational culture within a local authority has on the use of the PoWB,
- To define the role of local government, and to determine what impact different modes of relations between central government and local government has on it,
- To determine whether type of local authority is a factor in the usage of the PoWB,
- To establish what limits act to reduce usage of the PoWB, and to outline challenges that will threaten local government autonomy in the near future, and
- To determine whether the introduction of the PoWB has increased local authorities' autonomy.

### **Genuine local autonomy**

The PoWB was intended to increase local authorities' activity and enable them to overcome any limitations on discretionary activity. Local authorities' perception of the autonomy that it allowed differed from the aspiration. As the reality differed from the rhetoric, the autonomy offered was not perceived to be genuine. It did not significantly released local authorities from their shackles – as ambitious authorities would have succeeded in delivering innovative policy without the PoWB. A number of officers and members reflected that authorities shouldn't need a PoWB.

The previous chapters have identified that, despite the passage of time, the turnover of local government officers and elected members, and the sheer number of public service reforms during the period, awareness of the PoWB remains moderately high. Senior officers from two case study authorities reflected that awareness of the PoWB had been higher in the past. Awareness had since decreased due to turnover amongst senior officers, the passage of time and because the PoWB was introduced with a “fanfare”. The ‘fanfare’ that accompanied the introduction of the PoWB would have artificially increased awareness. Importantly, awareness was also moderately high regarding the limitation and restriction placed on the use of the PoWB – especially amongst the tertiary authority officers and members interviewed. One legal officer from a principal authority in an urban area reflected that the awareness of limitations presented by the PoWB may have depressed actual usage, citing that:

“I think one of the main factors that facilitate the use of the PoWB is how well it is known within the organisation. The top team here is very familiar with it, as are the middle management – probably more so than in an awful lot of other organisations. But it also inhibits the use of the PoWB because the reason the PoWB is widely known about is through a case that went badly [the LAML case]. So it does mean that people think about it. It does also mean that people tend to go ‘oh, not sure’ and tend to rethink using it.”

The high awareness of the restrictions and limitations amongst risk averse authorities may have caused those organisations to adopt a cautionary ‘wait-and-see attitude’. The following sub-sections draw together the key findings from the case studies to address their impact on use of the PoWB and local government’s autonomy. The sub-sections will address the impact of language used in the PoWB and the LAML case and how these impacts influence the degree of autonomy felt by individual authorities.

The conceptual basis of the PoWB

The term ‘well-being’ may have itself decreased the usage of the PoWB. Whilst a power of general competence has a solid internationally-comparable

definition, the PoWB was less defined. Officers highlighted that the context and background of the PoWB was “difficult to pin point”. As well-being means different things to different people at different times, one legal officer from a principal authority acknowledged that:

“there’s always been a tension on how to bring the PoWB in and what people mean by well-being. I’ve always looked at the PoWB as an enabling power, to get local government out of the situations that it itself into, when it wanted to do something specific on behalf of the community but were stopped because they didn’t have the *vires* to do so.”

One senior legal officer from a large rural principal authority reflected that local authority discretionary power should be clearly framed. That is to say, any discretionary legal power should have clear defined boundaries. A power of general competence has defined legal boundaries (as a result of international precedent), whilst the PoWB does not have a precedent and enabled local authorities to do anything “to improve the economic, social or environmental well-being” (Great Britain. Local Government Act 2000, sc.2). The senior legal officer noted that local authorities:

“shouldn’t be doing something that they have no business doing. It shouldn’t be involved in risky credit swaps of financial instruments that it has no knowledge or understanding of, which is historically what’s gone on”.

The officer reflected that this risk - of a local authority going too far or exposing itself to extreme liability - was the reason that the government “shied away from a power of general competence when they were looking at the PoWB”. This (if accurate) also reflects a reluctance to fully engage with localism and enable genuine autonomy at the local level. However, the reported level of awareness of the PoWB may be distorted by the predominance of legal officers amongst the survey respondents and interviewees. That is to say, awareness may be artificially inflated due to the potential pre-dominance of legal officers amongst respondents. As one legal officer from a principal authority stated, “actually policy officers don’t really know what powers are, and have little in-depth understanding of *vires* as a concept”. Therefore, if this assumption were to be



accurate, legal officers' and members' of the senior management team awareness of the PoWB would be the crucial perspective to capture.

On the origins of the PoWB, officers also cited that it was introduced to enable proactive local government rather than merely remove or reduce operational obstacles. Officers and members from several authorities also reflected that the PoWB allowed a cultural shift in attitudes towards local authority autonomy and the perception of organisation risk. Equally, this shift was not universally recognised.

Whilst some officers reflected that it enabled a shift in the policy and governance culture, other officers opined that the actual usefulness of the PoWB was much less certain – even though awareness was high. This seems to reinforce the theory highlighted by officers that it enabled a subtler cultural shift. Nevertheless, despite awareness of the PoWB itself, some officers seemed unsure on the procedure involved with the use of the PoWB. Officers reflected that they were unsure whether or not they had to “enact anything” and that saying they had “the Power was enough”, which seems to further reinforce the subtler change and emboldened approach that the PoWB enabled.

#### The impact of LAML on the mortality of the PoWB

If the previous assumption outlined by officers is accurate, the role of the Local Authorities Mutual Limited case (previously discussed in chapter 3) on the ability of the PoWB to act as a catalyst was significant. Although whether the LAML judgement delivered a mortal blow to the PoWB remains uncertain. One senior local government legal officer highlighted that additional judicial scrutiny (and therefore more case law) to define the boundaries of the PoWB would only benefit it. However, this may be a more accurate reflection of the officer's attitude towards local authority discretionary activity and risk aversion. Another officer highlighted the impact of the LAML judgement; “it has made us more cautious, there's no doubt about it. We wouldn't go and do something like that; we'd look very carefully at how we interpret well-being.” The impact that the

LAML judgement had on the usage of the PoWB cannot be ignored; LAML exposed potential pitfalls in interpretation of the legislation and the perspective of the Courts. One senior legal officer from a large rural principal authority reflected on the LAML judgement that:

“when local authorities have historically thought that they could do anything that’s when litigation comes in. I think the decision on vires [the LAML judgement] is very disappointing; I think generally speaking that the authorities involved in the LAML scheme haven’t met the technical exemptions but on vires – I’m not sure. Especially when you consider the government’s intention that the PoWB would represent a power of first resort, and having to examine it, as you always have historically had to examine the vires, takes something away from it.”

The LAML ruling highlighted that the Courts wanted to narrow the discretionary scope of the PoWB because they saw local authorities as creatures of statute i.e. as statutory bodies. Therefore the LAML ruling seems to offer a narrower, more defined, perception of local authorities’ role. Regardless, Judicial review exists to provide oversight. Whilst officers and members may be disappointed that the LAML ruling resulted in a greater restriction of the PoWB as an enabling power, the Judicial process itself exists to provide oversight and (where necessary) reign in powers<sup>4</sup>.

Officers’ and elected members’ disappointment about the LAML judgement was not universally shared. One senior legal officer from a large rural principal authority reflected that using the PoWB to ease local authority operations and using it to support traditional projects (i.e. to support things that the authority would be doing anyway) would be unaffected by the LAML judgement. The legal officer highlighted that the LAML judgment only impacted on actions that could be perceived to be “pushing the envelope”. Even so actions or policies that are outside of the ordinary course of local authority action could be delivered if “carefully considered about whether we could deliver against the

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<sup>4</sup> Importantly, it should be noted that the LAML ruling resulted in an amendment being added to an existing Bill that enabled local authorities to proceed on a purely financial basis (i.e. the basis upon which the LAML ruling was made). However, despite local authorities now being able to operate in areas that the LAML deemed off limits, the ruling itself seems to have dealt reputational damage to the PoWB and restricted local authorities’ discretionary autonomy.

requirements of section 2 [of the PoWB] and then consequential section [of the PoWB]”. The senior legal officer also reflected that “post-LAML our reporting of our use of the PoWB was much more detailed than perhaps we would have done before LAML”.

As the LAML ruling exposed potential weaknesses in the interpretation of the PoWB, it may have dealt reputational damage to the PoWB as a broad enabling power, particularly in the way that overtly risk averse authorities interpret the PoWB.

However, the LAML case equally could have raised wider awareness of the PoWB – especially as the LAML case (and subsequent judgement) was covered through the nationwide press. Nevertheless, the PoWB is still being adopted. This could imply that the damage dealt does not represent a mortal blow. Instead, it would seem to suggest that balance should be established between opportunity and risk, and that local authorities should establish an optimal balance. One legal officer from a large urban principal authority acknowledged the PoWB does have two sides and does require ambition from the local authority, “there is that dual aspect to it. We have to find the right balance; it’s about getting people to the stage where they feel comfortable in testing the boundaries. They’re not there yet, which is not surprising because it’s still a bit new”

The LAML ruling - and its potential impact on the PoWB – was not raised during the research conducted in the tertiary authorities. In what limited literature exists on the tertiary authorities, there is no mention of the impact of the LAML judgement on their use of the PoWB. It could be suggested that it did not significantly impact on tertiary authorities’ use of the PoWB because the ruling was based on a project beyond their capabilities, or that the ruling gave parameters to the PoWB in areas that already hold restrictions for tertiary authorities. Regardless of the reason, tertiary authority officers and elected members did not acknowledge that LAML had a detrimental impact on the PoWB as an enabling power.

They did emphasise the impact that the interpretation of risk has on the discretionary projects adopted by tertiary authorities. Whereas larger principal authorities may choose to absorb a certain level of risk associated with special projects, any risk of liability (besides loss of finance) could not be borne by any tertiary authority with smaller budgets and much fewer staff members. Equally, tertiary authorities cover significantly smaller areas because they only serve their community. They do also have the ability to levy a higher degree of discretionary finance than principal authorities, whilst still avoiding a double taxation effect on their communities. This would seem to emphasise the need for ambition from the local authority - as highlighted previously, implying that Pratchett's (2004) concept of 'earned autonomy' may be accurate. A more accurate representation would be that central government needs to permit (principal and tertiary) authorities to 'seize autonomy'.

#### Use of the PoWB: earned autonomy

Pratchett's (2004) concept of 'earned autonomy' may have reflected the nature of relations between central government and local government at the time. The notion of 'seized autonomy' may more accurately reflect the role of contemporaneous local government. As the Coalition Government is committed to localism, the current political climate also encompasses broad structural reforms in the public sector and reductions in expenditure. Local authorities are being encouraged to "step up to the plate". This is based on the rhetoric matching the reality. It is important to note that a proportion of interviewees have highlighted examples of contradiction between departments and across policy areas.

The high degree of awareness amongst the senior management team of authority A undoubtedly affected the levels of usage of the PoWB – particularly as one senior officer admitted a fondness for the PoWB because of its "slippery nature". Arguably, an authority whose elected members and senior management team adopted this attitude would have exercised a higher than

average degree of activism and exerted autonomy. That is to say, the introduction of the PoWB did offer authority A and similar types of authorities (i.e. pro-active authorities that operate outside of traditional 'comfort zone') a level of assurance. However, it did not prompt them to undertake action that wouldn't already be undertaken in the normal course.

Awareness of the PoWB in authority B was lower than authority A, and the interpretation was significantly wider. Whilst senior officers and elected members showed detailed knowledge of the PoWB, this knowledge was not echoed across the authority; although senior officers acknowledged that time may have dissipated awareness due to staff turnover. Even though the use of the PoWB may not be cited in Cabinet reports – as one officer highlighted “that sort of use of the PoWB is unlikely to ever be subject to scrutiny” – the interpretation that the PoWB acted as an enabling power seems to have reassured officers, which has allowed activism outside of traditional policy areas.

This finding seems to illustrate that the introduction of the PoWB enabled authority B to engage in policy outside its traditional sphere of influence, which seems to highlight that the PoWB was useful in easing legal restrictions for authorities that have historically lacked the capability to introduce innovative local policy. However, the officers interviewed also reflected that the LAML case did have an impact on the rationale that the PoWB acted as power of first resort for local government.

As policies and projects supported by the PoWB - and therefore outside of traditional local authority action - were funded through central government grants, the lack of an ability to provide discretionary finance would also act as an inhibitor to further special projects. As such, the degree of autonomy available to the authority itself remains restricted as the lack of locally-sourced discretionary finance would reduce the sustainability of local discretionary activity and potentially increase the level of control exerted by central government.

In authority C, officers and members awareness of the PoWB was much less widespread and less detailed. Whilst a few senior officers possessed knowledge of the PoWB, the majority of officers and members reflected that – across the sector – usage and awareness was much more limited. Officers acknowledged that the degree of local autonomy for tertiary authorities might be significantly lower than the degree of autonomy exerted by principal authorities. Officers highlighted that the generally lower levels of autonomy amongst tertiary authorities may be the result of historical neglect and the lack of a generally well-defined role for tertiary authorities. The relatively low levels of usage of the PoWB amongst tertiary authorities may be more accurately the result of awareness of the restrictions and the pre-conditions on its usage, or simply the result of other statutory powers being available.

Despite both tertiary authorities meeting the same eligibility criteria to use the PoWB, officers from authority D demonstrated significantly more detailed knowledge and awareness of the PoWB than officers and members from authority C. Both officers and members from authority D acknowledged that they didn't spend time covering the legal detail i.e. they didn't "spend a lot of time thinking about the PoWB per se". This finding seems to reflect that although awareness of the PoWB is mixed, it did seem to enable a shift towards pro-activity that has engendered a greater sense of autonomy than existed previously.

The greater degree of autonomy could be the result of variations in awareness. That is to say, even though officers and members are clearly aware of the limitations of the PoWB, perhaps a more in-depth awareness of the caveats and eligibility criteria would restrict (to a degree) the autonomy exerted by the authority. Senior officers demonstrated a significant level of awareness regarding the constraining nature of discretionary legislation. They cited that the constraints placed on discretionary powers by central government limit the freedom available to principal and tertiary authorities.

The relationship itself between different levels of government acted as an inhibitor to authorities demonstrating their autonomy – particularly as they felt “we had to ask permission [to use the PoWB]”. Whilst Leach and Percy-Smith (2001) and Blond (2009) reasoned that the focus on the duality of the central-local debate may increase the homogeneity of both government levels, there has been little contemporary academic debate on the ways in which different governmental levels interact and impact on levels of discretionary activity. This may especially be the case when communities are served by multiple levels of governance – although the artificial presumption that different levels of government would automatically act combatively may also be false. Instead, activity conducted by tertiary authorities may dovetail (and compliment) principal authority activity.

Relations between central and local government have been characterised by different scholars as a ‘complex game’ (Rhodes, 1981), a ‘swinging pendulum’ (House of Commons, 2009) and as a relationship as between ‘a parent and child’ (Clark, 2011). In fact a practical model of relations is much more complex and multi-faceted, and is something more akin to the model outlined by Wilson and Game (2006) that distinguished between degrees of relations (i.e. political, functional and administrative) as opposed to a simple duality. Instead of an overly simplified dichotomy between centrists and localists, a multi-polar model might be more appropriate.

The PoWB was intended to act as an enabling power for local authorities, and clearly central government anticipated that it would act as a power of first resort. In fact the PoWB may have offered them greater choice within a shrinking system of constraints or enabled local authorities to pursue guided localism. That is to say, the PoWB enabled authorities to pursue localism within defined parameters or policy areas – similar to Wilson and Game’s (2006) ‘partial or earned autonomy’ distinction and Pratchett and Leach’s (2004) ‘choice within constraint’ model.

So whilst the PoWB may have offered local authorities greater operational discretion (in terms of legal cover for special projects), the fact that the introduction of the Local Government Act 2000 resulted in certain sections of the Local Government Act 1972 becoming obsolete, reduced the local authorities strategic autonomy, particularly as the removal of s137 of the 1972 Act ultimately reduced authorities' ability to support discretionary services and special projects. As section 137 of the 1972 Act allowed a discretionary finance limit for community projects, which the 2000 Act did not, the introduction of the PoWB removed local authorities' ability to provide discretionary finance. This abolition of section 137 further constrained local authority activity and reduced their ability to exert local autonomy.

Over the last 30 years, reforming local government has been one of the key questions of governmental relations. As highlighted earlier, relations between central government and local government have not always been consensual and – at times – outright combative. Wilson and Game (2006) distinguish types of relations between central and local government, and different categories of local authority autonomy could also be classified. Wilson and Game highlight that, in the past, governments have chosen to decentralise power in “different ways and to different degrees” (Wilson and Game, 2006, p.25). One point of this thesis' hypothesis is that local government autonomy could be classified by type – as either strategic autonomy or operational autonomy. As Wilson and Game recognise the different types of inter-government relations, similar degrees of freedom for local government can be defined i.e. financial freedom, political freedom, and legal freedom; which contribute to either the strategic or operational autonomy of the authority.

As Leach and Percy-Smith (2001) highlight, the central-local debate only acknowledges two dimensions in a multi-dimensional relationship that further reinforces the uniformity on both sides. The interview data would support this conclusion – almost unanimously, particularly as officers highlight examples of different central government departments pursuing divergent, and sometimes contradictory, policy agendas.



The opposite may more accurately portray the practicality. One officer from one of the case studies argued that Government's rhetoric on localism does not match the reality of governmental policy, which has emerged from a growing theme of inter-governmental relations over the last 30 years. The impact of the Judicial process is not acknowledged, where in practicality the role of the Courts played a significant part in the degree of legal flexibility held by local authorities i.e. the impact of the LAML judgement on the PoWB may have had a significant impact on the strategic autonomy of local authorities.

One officer from a case study authority surmised that authorities just want central government to leave them alone and to leave authorities to respond to communities' needs. The officer also recognised that there's "a million ways in which we get centrally controlled". On its introduction, central government intended that the PoWB would act as a power of first resort for local authorities. The PoWB was intended that it would enable local authorities to support any policy or project that would not be in breach of existing legislation, whereas a power of first resort was essentially the only power an authority would look to support a discretionary action, without having to look for a further supplementary or ancillary power. Whether or not the intention met the reality remains uncertain.

#### Culture as the key to ambition

As the Transport, Local Government and Regions Committee report found, "the Government's stated intention at the time of the Act—to restore the self-confidence of local government—has been lost in the focus on internal change" (HoC, 2002).

If only 15% of local authorities have used the PoWB (Williams, 2010), this would confirm that local authorities have not adopted it as a power of first resort. The interview data would support this conclusion, although, the initial scoping survey data would challenge this conclusion. The majority of officers and members

from the case study authorities reflected that their authorities didn't use the PoWB as a power of first resort. Some officers referred to the PoWB as a power of last resort, suggesting that local authorities' attitude towards the PoWB might equally be a reflection of the culture within the organisation, and their capabilities, as much as it is a reflection of the legislation itself. However, how exactly does organisational culture shape the authorities perception of risk and their adoption of the PoWB?

"A positive culture, providing a springboard for staff to perform at their very best, is seen by chief executives and senior managers as vital for effective results. They stress the importance of taking a pro-active approach to organisational culture, building on the many positive aspects of council culture and moving away from aspects that act as a drag anchor on performance"

(IDeA, 2009: p.5)

IDeA highlights that 'culture' is made up of a variety of things, which are:

- The values the organisation encourages,
- The goals it pursues,
- The example set by leaders,
- The performance and reward frameworks it deploys,
- The behaviours it encourages,
- The 'look and feel' of the workplace, and many others

(IDeA, 2009: p.6)

The development of a proactive culture, that facilitates ambition, is crucial in the modernisation of local authorities and deployment of genuine local autonomy. The recession, and subsequent tightening fiscal environment, place greater emphasis on the necessity of innovative local government. Use of the PoWB may be one indicator of proactive organisational culture. As such, authorities that did not adopt the PoWB - instead relying on existing legal duties - face charges of being inward-looking, reactive authorities unwilling to 'seize' their autonomy. IDeA highlights that local authorities "in the past and sometimes in the present, tend to be inward-looking, silo-based, resistant to change and challenge, and more concerned with a self-serving attachment to a particular model of delivery" (IDeA, 2009: p.8).



*"That's the cultural changing room."*

(LGiD, 2010b)

If this is an accurate assumption, it might reflect that the managerial culture within the majority of authorities remains risk averse. As such, organisations are unwilling to exert their autonomy beyond traditional authority activity. Alternatively, the majority of authorities may be comfortable with the discretionary powers that are currently available to them to deliver their projects. Moreover, the PoWB is enabling a minority of authorities to exert a greater degree of autonomy rather than enabling all authorities to exert more autonomy. However, whether it is has succeeded in engendering a subtler shift in the culture of authorities to foster ambition that would enable them to become strategic leaders of their communities remains much less certain.

## **Organisational Capabilities: a culture of ambition**

As highlighted, the culture of an authority could impact significantly on the usage of the PoWB, the level of (perceived) autonomy it has, or the degree that the authority engages in extra-statutory policies or projects. Whether or not the PoWB engendered a cultural shift towards greater organisational ambition remains to be determined. As previously discussed the PoWB did not become a power of first resort that was originally intended; in fact, the opposite may be more accurate i.e. that it was a power of last resort. This would seem to imply that local authorities remain risk averse, when taking action beyond their traditional remit. As Eric Pickles highlights, authorities must conquer risk aversion to exercise their autonomy to 'seize localism':

"Power to sit on your hands and freedom to twiddle your thumbs isn't real power or real freedom ... I think it's reasonable that councils shouldn't use their new found freedom to saddle up the horses, arm their citizens and invade France. Apart from that, the world will be your oyster."

(Pickles, 2010)

The interview data would seem to reflect that at least some authorities retain risk averse attitudes towards discretionary action. However, the data does not definitively cite the reason for their risk aversion; nor does it reflect that this risk aversion is maintained by the majority of authorities. The rationale behind some local authorities' risk aversion may be, as discussed in chapter 3, the result of unwillingness to expose the organisation to perceived external risk, therefore adopting a narrow interpretation of discretionary powers, and adopting a 'wait and see' attitude towards discretionary interventions. The risk aversion in some local authorities was directly referred to in the data, primarily in Local Authority A but also in Local Authority D. The findings from Authority A reflected that local authorities' risk averse stance was the result of overly cautious senior legal officers. Senior officers in authority A recognised that the senior legal officer in authority A had adopted a proactive attitude towards discretionary powers and interventions. Senior officers thereby recognised the senior legal officer in an authority as a potential catalyst in the adoption of the PoWB.

Officers in authority A highlighted that risk averse legal officers tended to rely on established legal duties, rather than utilise the PoWB, even if the power didn't push the boundaries. This finding was further reinforced by the findings from authority D. One elected member from authority D stated that "[the PoWB] has an element of risk attached to it and some local authorities are risk averse."

Officers do reflect that the historical mode of relations between central and local government has not engendered a greater sense of autonomy; the opposite may much more accurately reflect the reality. Officers and members seem to acknowledge that the historical constraint of local government by central government has caused an unwillingness to test their autonomy. However, other officers and members, also acknowledge the effect that these relations have had on local autonomy but question whether this has resulted in outright risk aversion, instead suggest that local authorities are adopting a more cautionary wait-and-see approach to discretionary activity. In either case, this could essentially create a self-reinforcing scenario that continues to act as a constraint on local authorities because they don't test their autonomy by acting beyond their traditional remit. Therefore the only route that would allow local authorities to realise their autonomy would be either for central government to 'direct' authorities towards autonomy (i.e. "encourage local authorities to step up to the plate" (Pickles, 2010)) or for authorities to 'seize' their autonomy from central government.

Whilst officers recognised that historical inter-government relations may have a significant impact on organisational or managerial culture of authorities, other more current factors may have a more direct impact on the culture within local authorities. As mentioned previously, the 2008 financial crisis and the ensuing economic recession did – and continues to – have a significant impact on the culture within local authorities. One eventual impact was of severely reduced expenditure in the public sector, which reduced local authorities' budgets and therefore caused cuts to specific projects. This means that there is less funding for discretionary projects, and also fewer officers due to reductions in staff budgets. Officers and members recognised that local authorities would have to

operate within a shrinking resource base, but with an increased demand on services (i.e. do more with less). This issue will be discussed later in this chapter. A number of officers and members also reflected that the reduction in public sector expenditure may also present an opportunity to local authorities to act differently to deliver innovative policy.

This finding raises the broader point that external pressures may force local authorities to respond differently to meet challenges in the future. Although officers and members widely acknowledged that local government would have to act differently in the future to deliver radical innovations with regard to service delivery, there were no suggestions from interviewees as to what exactly radical innovation would look like. One senior legal officer from a rural principal authority acknowledged that there isn't enough innovation in local authorities, but also that officers don't tend to think about innovation in traditional areas stating that:

“Libraries are a classic example; local authorities have always provided libraries in buildings in local communities and that is how we deliver a library service. But do local residents need a library service to be like that, could it be in a supermarket or could it be an Amazon style arrangement that delivers books. I don't know. I think it's that kind of thought of whether there's another way to do this [of thinking differently]. I think adult social care is very good at that, because they do keep changing because they have to keep changing and adapting.”

Eric Pickles has acknowledged that local authorities would have to continue to operate with less funding but that the “fiscal environment was less important, structural change would deliver innovation” (Pickles, 2010). The data reflected that external challenges could assist in delivering radical innovation. A minority of officers and some members acknowledged that one of the biggest challenges – when trying to achieve genuine local autonomy – was getting local government officers and members to think creatively but that the current reductions in public expenditure could deliver some innovation – potentially through shared services. A number of officers also reflected that radical innovation (and specifically shared services) was not the universal remedy that

would deliver autonomy. One legal officer from a large principal authority cited that:

“I think that shared services are not the panacea that lots of people think they are, because they will take a reasonable amount of investment to deliver a return and whether they deliver a return – significant enough – remains to be seen.”

However, the data also suggested that special projects would only be successful with political support, and wider political stability within an authority. A significant minority of officers acknowledged that political momentum was extremely important when trying to deliver discretionary services; one senior legal officer stated that:

“I think that special projects [like shared services] only really go ahead if they’re supported by politicians on all sides, so they all pull together or politicians don’t care about it and so it slips under the radar. If politicians aren’t for it, then it just won’t go ahead.”

This finding seemingly reinforces both the importance of political support and - the point made earlier in this thesis - that organisational ambition would have to be matched by political ambition in order to counter local authorities’ apparent innate risk aversion to produce an appetite for innovation. Officers from authority A also reflected that political momentum from outside the authority (e.g. central government) could also drive projects and policies that could act counter to communities’ interests. Officers also acknowledged that autonomous local government (i.e. authorities with the determination to accept operational risk and the capability to exert autonomy) could be able to counter such overt centralism. One senior legal officer from a rural principal authority cited that this could also be linked to local authorities, and that it was a wider inherent risk of strategic community leadership, stating that “it all goes back to what the local community needs as opposed to ‘this is what we’re giving them’”.

Whilst overt centralism is a risk that affects the autonomy of all tiers of local government, potentially, political stability and ambition are a lower category of risk to the autonomy of tertiary authorities than to principal authorities. As

acknowledged earlier, elected members of tertiary authorities tend not to act as political agents – to the same degree that elected members of principal authorities do – instead they tend to act as community representatives. As highlighted in chapter 3, political stability may be significant due to the effect on linkages between local authorities within the same area (i.e. links between tertiary and principal authorities). An officer from Authority C reflected that “political instability adds to the risk [when taking on new discretionary projects]”.

This finding was further reinforced by one elected member in the same authority, who acknowledged the importance of political stability in building solid relationships between officers and members, thereby also affecting take-up of discretionary projects, stating that:

“it helps if you’re going to take on a major challenge if you’ve got a good spirit, trust and confidence across the council’s leadership. We’re lucky we’ve got that here; we’ve had the stability over the years. In other councils there’s so much mistrust they’d be really reticent to go and take on a new project.”

This finding would seem to suggest that the level of political stability in an authority plays a larger role in the take-up of discretionary projects than was hypothesised earlier in this thesis. The impact of political stability may act as a contributing factor towards the overall risk aversion of an authority – rather than a present a more direct impact on the adoption of discretionary projects. The positive impact of cross-party political support (rather than political stability) was alluded to by one legal officer from a large principal authority. The data did confirm that the relationship between officers and elected members is crucial when deploying something that is not required by statute i.e. discretionary services. One senior legal officer acknowledged the importance of the officer-member relationship when acting beyond local authorities’ usual remit. This officer also highlighted that senior local authority managers might be better placed to introduce innovation, stating that “it’s much more based with the senior management team looking as creatively as they can in each of their areas.”



This finding presents a divergence in the interview data. The senior legal officer, and others, reflected on the role of senior officers in innovation. A significant majority of officers and members reflected on the importance of elected members acting in co-operation with officers – rather than officers acting unilaterally. One senior officer from authority D reflected that “if you haven’t got the involvement of the local authority and those people that are democratically elected to care for the local community; I think it’s going to be difficult to understand on what basis you’re leading the community or acting on behalf of the community”. Whereas a senior officer from authority B reflected that:

“I think there’s forgetfulness about who is the local authority. Yes it consists of non-executive officers, from the Chief Executive downwards – but at the end of the day, the officers do the policy bidding of their elected members. We advise them, we can help shape policy, we have a wealth of experience about what works and what doesn’t work but they are the decision-makers. They have been democratically elected and it is their policy that we interpret, formulate and draft.

One senior legal officer from a principal authority highlighted that “in many ways members may be more attuned to it because some of them will have a lot more time on their hands to consider how to innovate”. Regardless, the significant majority of the interview data highlights the importance of the officer-member relationship when introducing special projects – albeit to differing extents – and the wider implications for the authorities’ organisational culture.

As highlighted previously in this chapter, the culture of an authority does significantly impact on an authority’s usage of the PoWB, and their wider provision of discretionary services. A more accurate proposition might be that the capabilities that an authority possesses would significantly impact on the discretionary activity of an authority. An authority’s culture could impact on discretionary services, but organisational culture is only one aspect of the wider capabilities of an authority and therefore (potentially) only one factor that should be considered. The organisational capabilities of a local authority – such as the extent to which the organisation is willing to accept risk, the level of discretionary resources available, the extent of political stability locally or the

council's culture – contributes to the overall ambition of an authority, and its willingness (and ability) to engage in something that is not statutorily required.

There are differing levels of organisational ambition – due to the varying capabilities of various authorities – whilst any attempt to classify authorities into categories that have and do not have any ambition would prove impractical. Authorities could be categorised by organisational capability, which could then be adapted to be included in a typology of local government to establish a distinction between *pro-active*, *cruising* and *reactive* local authorities. Such a typology could assist in gauging the impact of organisational culture in engaging discretionary services, and particularly local authorities' usage of the PoWB. By categorising capabilities, a typology could assist in the analysis of the PoWB's role in enabling genuine local autonomy. These categories will be discussed in further detail in the next chapter.

### **Use of the PoWB: a contemporary typology for discretionary activity**

The election of New Labour, and the subsequent implementation of a Public Services modernisation agenda, has raised academic interest in local government. Stoker (1994) began to explore local government and the rationale of local authorities as enabling authorities – as a method of developing local government's capabilities to provide appropriate local leadership for their communities. Sullivan (2007) highlights that, as a result the election of New Labour, community leadership became a central tenant of New Labour's modernisation of local government.

Local Government's new strategic community leadership role would enable vibrant local leadership that focused on networking, influencing and leading communities (Sullivan, 2007). As a result of the 2008 financial crisis, local authorities must now operate in an environment that now includes reductions in public sector expenditure. Pickles (2010) reflects that the key element in the central-local relationship is no longer focussed on the top-down perspective and what central government is doing to local government, but about how much

(and what types) of powers and freedom that central government can offer local government.

The Coalition Government's Programme for Government (Cabinet Office, 2010) declared a series of reforms that would enable a fundamental shift from central to local government and beyond – to their communities. Its manifesto has made a commitment to localism, including a number of specific pledges:

- We will promote the radical devolution of power and greater financial autonomy to local government and community groups. This will include a review of local government finance.
- We will create directly elected mayors in the 12 largest English cities, subject to confirmatory referendums and full scrutiny by elected councillors.
- We will give councils a general power of competence.
- We will introduce new powers to help communities save local facilities and services threatened with closure, and give communities the right to bid to take over local state-run services.
- We will allow councils to return to the committee system, should they wish to.

(Cabinet Office, 2010: p.11-12)

The Coalition Government's focus on localism, matched by the reduction in public sector expenditure, engendered a wider popular interest in local government, communities and community leadership.

In a report for the Audit Commission, Leach acknowledges that local authorities have the ability to provide 'strategic leadership' and moved on to outline three 'ideal types' of local government. The first, 'service first', was essentially a service delivery arm concerned primarily with performance. The second, 'civic leader', was focussed on governance and medium-term planning. The third, 'democracy hub', focuses on renewing and promoting local democracy (Audit Commission / IDeA, 2005). These categories were not classified into a more formal typology, and only reflected the organisations' scope to make strategic choices on the type of local authority they wanted to be.

The three categories are artificial concepts because the three types were identified and then the local authority could choose which type would best “fit for purpose”. Therefore Leach presents a model for local governance rather than a typology of contemporary local government. Whilst the typology upon which this thesis builds, (as already outlined) is orientated around the original research into local authorities’ discretionary powers, this then formed the three categories within the typology construct. However, there are similarities between the typology that this thesis outlines and the three ‘ideal types’ of local authority that Leach (2005) outlined. The most significant similarity is that the category the local authority is classified as is determined by the local context rather than organisational similarity, political structure or demographics.

Any study of local government must begin with the knowledge that different authorities respond differently to broadly similar experiences. The distinctions between local authorities and the policy variations between them – because of the total number of organisations (both principal and tertiary) and their sometimes superficial structural similarity – can become ameliorated, due in part to the scale of the comparison. As highlighted earlier, this thesis will present a typology of discretionary activity for local government in contemporary Britain. The typology will be categorised by activism and relates to authorities’ discretionary activity. Figure 12 will outline in further detail the typology of local authorities’ discretionary activity.

Based on the concept that the role of local government is to provide strategic leadership to their communities, the typology contains two characteristics that define authorities’ discretionary activity into the three categories mentioned previously. The two characteristics referred to are ‘*perceived autonomy*’ and ‘*organisational capabilities*’. Informed by the interpretive approach developed by Bevir and Rhodes (2004) and based in original academic research, the typology will classify authorities into three broad categories (that determine their approach to local authority discretionary activity), *pro-active*, *cruising* and *reactive* authorities.

The first classification, the *Proactive local authority*, categorises those organisations that have demonstrated a practical and ambitious approach to the use of the PoWB and the deployment of discretionary services. *Proactive* local authorities interpret discretionary powers in their broadest sense, exert a high degree of local autonomy and demonstrate a high level of organisational capability (whether through awareness of discretionary power or organisational resources). Whether *Proactive* authorities exercise a higher degree of organisational autonomy than *Cruising* authorities or *Reactive* authorities due to higher perceived autonomy that has been ‘seized’ or whether it’s due to the culture of the authority that has engendered organisational ambition, remains to be determined. If organisational capabilities are determined to have a significant impact on local authorities’ level of activism then this would have a direct impact on the policy implications for greater localism; specifically if the key to creating *Proactive* authorities is greater availability of discretionary finance. In a political landscape that now includes severe reductions in public sector expenditure, this conclusion would present damaging implications for the future of localism and genuine local autonomy. That is to say, fewer authorities would become *proactive* due to the restriction of available discretionary finance. The total number of *Proactive* authorities could be reduced by the overall reduction in public sector expenditure that may negatively impact on authorities’ engagement in discretionary services.

One of the case study authorities – Authority A – would fall firmly into the *Proactive* authority classification. The interview data from authority A would seem to reflect that access to discretionary finance does not have a significant impact on the capability of the authority. This would seem to underline the previous conclusion (that the key to creating *Proactive* authorities is to increase the availability of discretionary finance) incorrect. Other findings do reflect the restrictive nature of the lack of discretionary finance that would seem to suggest that even though it is not the deciding factor it still has a tacit role in enabling local authority activism. The interview data did reflect that officers and members from authority A were concerned that the reduction in public sector expenditure may reduce local authorities’ operational role. This concern was

also balanced by the potential for innovation and that even though local authorities' operational role may be shrinking this did not automatically mean a smaller discretionary role.

The interview data did also highlight that the culture within the authority, and the level of ambition that it has, were crucial in the decision to take on discretionary services. One senior officer indicated that:

“I think it's the cultural issue behind the organisation not the legal power, is the organisation minded to try and do things? So overall, I think it's [the PoWB] one of the best powers we've probably got”

Even officers and members from authority A – that could easily be classified as an outward-looking authority that takes a proactive approach to community leadership – reflected that central government needed to step back and allow authorities to engage with local policy freely. This would reflect genuine local autonomy and enable to authorities to pursue proactive community governance free from central government influence or interference. One senior elected member stated that ‘authorities want their autonomy and to be left alone’.

As highlighted previously in this thesis, officers from authority A did reflect that “any authority worth their salt wouldn't need a PoWB”, which does reinforce the earlier conclusion that (at least) some local authorities do have more discretionary power and operational autonomy than they acknowledge. This conclusion would seem to imply that the key factors in trying to increase autonomy – instead of access to finance – would be to raise awareness and to engender a culture of ambition within the authority. Whilst officers and members did not suggest that access to finance plays a key role in greater operational autonomy, lack of locally-raised finance that causes authorities to rely on central government grants is a longer term threat to authorities' strategic autonomy.

The second category, the *Cruising* local authority, classifies those authorities that demonstrated limited ambition in their use of the PoWB and discretionary activity, or those organisations that have demonstrated an ambition to engage

with discretionary services but that ambition is limited by the organisation's capabilities. *Cruising* authorities demonstrate a cautious interpretation of discretionary powers, and only exert a moderate degree of autonomy, or they have a record of demonstrating a broad interpretation of discretionary powers that highlights a proactive approach to discretionary action but currently seem to be restricted in their ability to engage in non-statutorily required services. The distinction between *Proactive* and *Cruising* authorities could be a sometimes blurred one – particularly given the various levels at which an authority could 'cruise', and given the potential difficulty involved in determining the distinction between a continually *Proactive* authority and a *Cruising* authority.

The interview data revealed that one of the case study authorities (Authority B) had demonstrated a historical proactivity towards discretionary activity but no longer had the capacity to engage in non-traditional services. The interview data reflected that Authority B not only 'seized' their autonomy but also defended their autonomy from central government's advances. That is to say, one of Authority B's discretionary projects was questioned by central government as to whether it breached ultra vires. However, Authority B defended their decision to engage in the project and justified that it was not ultra vires by citing the PoWB.

"what they were saying to us was that they wanted a financial appraisal of our well-being programme and they wanted to know why we hadn't done a standard project assessment. We were spending this money, but really had we done a cost-benefit analysis? So we said to them that we were using the powers in the Local Government Act 2000 – we were using the well-being powers ... we actually said 'well in the 2000 Act it says that you can do whatever you feel necessary, so please go away' and they did."

This challenge from central government may relate specifically to the project engaged in by the authority. The specific challenge arose from a project that aimed to promote the emotional resilience in classrooms, which involved sending teachers to the USA on training courses. The authority did not provide a cost-benefit analysis alongside the project. Therefore, central government challenged the project on best use of public funds and value for money basis. A

senior legal officer from a large urban principal authority reflected that central government had not offered a challenge to the discretionary projects engaged by that authority. The senior legal officer stated that “we’ve done some reasonably challenging things but we’ve not faced any challenges”.

The interview data also highlighted that the lack of available finance did restrict (to a degree) the discretionary activity that Authority B could undertake but recognised that the some of the discretionary activity had reached a critical mass that would enable them to carry on without the significant levels of finance that previously had been required. One senior finance officer reflected that ultimately “finance oils all the changes – there’s not much you can do without resources”. An elected member from authority B reinforced this point highlighting that sweeping structural statutory freedoms are contradictory if local authorities’ fiscal environment is tightening, stating that:

“you’re having one conversation with government, they’re saying that ‘well you can do anything you want, whenever you want, whatever’s positive for your community you can do it’ but in the next conversation ‘oh by the way, we’re taking 23 million pounds from your budget.”

The interview data also indicated that changes in senior officers and senior elected members in decision-making roles within the authority could also have affected the decision to engage in discretionary projects. Therefore, it could be assumed that authorities could operate in both *Proactive* and *Cruising* categories – depending on the degree of activism and the discretionary projects that the authority engages in.

Another case study authority (authority D) could also be categorised as a *Cruising* authority. The interview data seems to suggest that authority D has only demonstrate a moderate degree of discretionary activity. It may be important to highlight that at the time this research was carried out authority D had only had ‘Quality Council’ Status (and therefore only been able to use the PoWB) for between one and two years. Therefore, given the time allowed, the moderate degree of discretionary activity – whilst keeping the authority in the *Cruising* authority category – would also seem to suggest that authority D could



increase its discretionary activity. One senior elected member from authority D reflected that since the authority was awarded the Quality Council Status “we haven’t rested on our laurels”.

“My understanding means that the council has the power, the ability, or at least the potential to act in a way to spend money on a particular activity because that is in the best interests of that community. There are so many other ways of doing things that the PoWB is something you very rarely put to the forefront. You always look to do something in another way; I think that the PoWB is always open to personal interpretation, isn’t it?”

Equally, another elected member reflected that “I don’t think I would want to pretend that I spend a lot of time thinking about the PoWB per se”. This would seem to imply that the PoWB took an enabling format that empowered the local authority. This finding also seems to suggest that there is no formal structure involved in using the PoWB, which further raises the possibility that more local authorities have used than the PoWB than the 15% figure would indicate:

“I don’t know how many types of councils have used the PoWB. I think sometimes when a power is so loosely framed; it creates the opportunity to do certain things but it doesn’t necessarily given them a very clear mandate and some places shy away from doing things that are perhaps innovative or discretionary because there is often a risk involved in doing certain things.”

The third classification, the *Reactive* local authority, categorises those organisations that, whilst they have a similar level of organisational capabilities (i.e. resources), have demonstrated little awareness of their discretionary powers or have adopted a narrow interpretation of their discretionary power and therefore demonstrated only a small degree of autonomy beyond traditional service delivery. *Reactive* authorities could be classified as traditionally orientated service delivery authorities that tend not to look beyond their usual remit, do not have the capabilities to do so or show little organisational ambition beyond the usual course. The distinction between *Cruising* and *Reactive* authorities could also be sometimes blurred by the potential overlap.

One of the case study authorities (authority C) could be categorised by the *Reactive* authority classification. The interview data from authority C would seem to highlight that the restrictions and caveats, as well as the limitations on discretionary finance, reduce the capability of the authority to act and engage in discretionary activity. One elected member outlined the blockages, and legal uncertainty, that the restrictions can create:

“if you focus on Section 3 of the 2000 Act, I don’t really like this provision, it says that the power under section 2 [the PoWB] does not enable a local authority to do anything they are unable to do by virtue of any prohibition, restriction or limitation on their powers, which is contained in any enactment whether passed or made. Secondly they aren’t able to raise money by borrowing or otherwise, and a lot of these initiatives need funding. Unfortunately, a lot of these things are not black or white. You can’t actually be sure whether there’s some other limitation that’s going to get you into a legal wrangle.”

It is worth noting that as a tertiary authority, authority C would have greater access to discretionary finance (at a higher per capita basis) than principal authorities would be able access. Equally, officers and elected members from authority C reflected that the authority – even with the restrictions, caveats and limitations – had set a precedent, by using land drainage powers that had been delegated from the principal authority (the scenario is outlined by an elected member from authority C in chapter 7).

This finding reinforces the conclusion, presented initially in chapter 3, that local authorities have access to (and the ability to exercise) more discretionary powers than many authorities acknowledge. This finding offers information on the catalyst behind the discretionary project and use of the PoWB. The elected member, in outlining the scenario, implies that the catalyst behind the decision to engage discretionary project was in response to a negative external challenge. However, the member did not say whether the tertiary authority would have undertaken the project without the assurance provided by the principal authority. In this case, by providing delegated powers, the principal authority may have encouraged the tertiary authority. The PoWB alone may not have had the same result. A noteworthy distinction from this case is that the

delegated land drainage powers are historically proven and allow for specific actions to be undertaken; whereas the PoWB does not have historical precedent. Therefore, the authority may have been less inclined to undertake the local flood relief scheme without the delegated powers from the principal authority (i.e. with the PoWB alone).

Despite the superficial structural similarity and the relative standardisation between authorities, which could imply that all authorities might respond similarly to challenges, with regard to discretionary activity it would seem that some local authorities are *first amongst equals*, when compared to other authorities (i.e. local authorities' comparable record of discretionary activity is extremely uneven). Indeed, in a similar way that local authorities are first amongst equals amongst Local Strategy Partnership partners (ODPM, 2005), it would be more accurate to say that while all local authorities are equal, some are more ambitious than others and that those ambitious authorities are first amongst those equals. This disparity between local authorities occurs as a result of the local context that authorities often respond to. Even so, it also suggests that the critical factor in discretionary projects (and therefore local autonomy) is the culture of an authority – particularly if the previous conclusion is correct and local authorities have access to more discretionary authority than they currently exert. The cultural ambition of an authority, which the typology attempts to distinguish and categorise, is also crucial because of the role that it plays in the willingness to accept risk and commit resources.

A fuller measurement of understanding of these interpretations of discretionary activity (and authorities' attitudes towards their own autonomy) is important as each degree of activism has differing policy implications for local government and the future of localism.

The concept of local authorities acting as leaders in their communities is not a recent concept. Whilst definitions would most likely differ between cases, Sullivan describes a local authority's community leadership role as "the pursuit of community well-being through strategic interventions that would not

otherwise have happened” (Sullivan, 2007: p.143). As highlighted earlier in this thesis, community leadership has been an intermittent aspect of local government since the nineteenth century. Although the extent of local government’s community leadership role had shift in reaction to changes in inter-governmental relations, and in the post-war era local government became a service delivery model for central government, the advent of the New Labour saw community leadership become a key aspect of the renaissance of local government (Sullivan, 2007: p.142).

Sullivan also acknowledges that the 1998 Local Government White Paper, which placed community leadership at heart of modern local government, forms a distinct shift from the previous ‘inward-looking’ authorities (DETR, 1998; Sullivan, 2007: p.142). However, whether the shift from inward to outward looking local government ever occurred remains less certain. Sullivan emphasises that this inherent scepticism was reflected in suspicion about central government’s commitment to local authorities’ community leadership role, highlighting that:

“stakeholders who questioned how far the government was committed to local authorities developing a community leadership role (taking on more responsibilities thorough community strategies and local strategic partnerships), perceived a tension between policies promoting greater freedom for local government and an apparent need for control and regulation in key areas that impacted adversely on innovation on the local level”

(Sullivan, 2007: p.151)

Perhaps, in part due to the imposition of performance metrics, a more accurate summary for some authorities would be a shift from inward-looking authorities to upward-looking authorities i.e. waiting for direction from central government. Sullivan concluded that a universally agreed definition of community leadership continued to elude academics as “the meaning of the term continues to be opaque” (Sullivan, 2007: p.157). Similar to the difficulty in established a concrete standardised definition for well-being, the definition of community leadership would be informed by the local context. Equally, as with well-being, this thesis does not seek to undertake a conceptual analysis of the meaning of

community leadership nor well-being; instead, it reflects the current interpretation in the existing literature.

The typology (see figure 12) will assist, as an analytical construct, in the exploration of the PoWB and in the investigation of local authority discretionary activity. As analytical constructs, the authority categories are based on the original data gathered as part of this thesis investigation. Whilst the fundamental basis for the typology rests on the author's doctoral research, additional insight was found in existing literature. A typology as a valid analytical construct on local government must be verified through repeated case studies in differing situations.

Whilst the typology does allow certain controls, it can only provide a general guide to an authorities' discretionary activity. The typology removes special considerations – such as local authority type, setting, population served, regional variation and political control – and focuses on the authorities' discretionary activity. All of the case study authorities that are classified in the typology have demonstrated some discretionary activity by their use of the PoWB. As such, the typology can provide a general guide to discretionary activity; it cannot be applied to local government innovation and an authorities' category may differ by policy area.

The typology classifications also present significant inherent risks. The typology categories do not emphasise (or reduce) the potential dangers of excessive overt local government control. At the opposite end of the spectrum, the typology attempts to highlight potential ambivalence by some authorities towards local government's community leadership role and to engage in non-statutory services. It does, however, attempt to reduce the homogeneity of local government and stratify the degree of discretionary activity and special projects engaged in by local authorities.

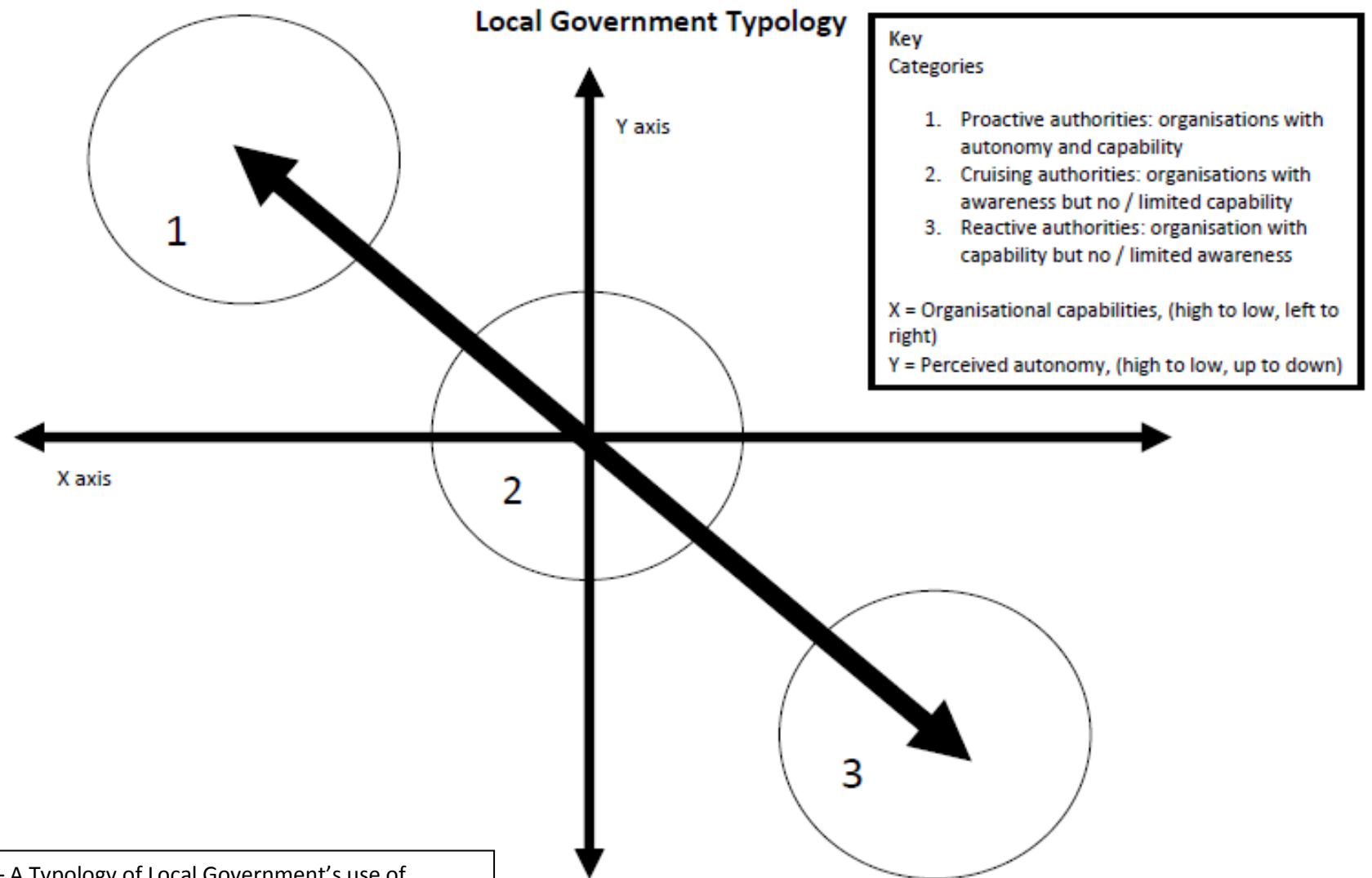


Fig 12 – A Typology of Local Government's use of discretionary powers in Contemporary Britain

## **Blockages to local government's use of discretionary power in the future**

Officers and members from all the case study authorities, and a significant majority from the scoping authorities, reflected the risk that the reduction in public sector expenditure posed to local authorities' discretionary activity and their community leadership role. There was, however, a divergence in the interview data.

Officers and members felt that the withdrawal of finance would leave authorities exposed, that local government would retreat into their traditional core-service provision model of delivery and that risk aversion would increase substantially. Officers also reflected that a universal percentage reduction in local government funding that did not take into account the local context of an authority and the efficiency savings that individual local authorities had already achieved,

A significant number of officers and elected members felt that funding reductions reduce the likelihood that local authorities would engage in discretionary action because 'funding was the key'. Equally, a significant number of officers and members from the interviews reflected that authority officers and members would not think 'creatively' about their problems if they were not challenged. That is to say, officers and members reflected that the reduction in public sector expenditure could act as a catalyst to introduce wide-scale innovation to local authorities.

Officers and members also felt that the restriction of available finance had the potential to introduce longer-term structural change to local authorities – particularly if this potential was harnessed and accompanied by reform of local government finance. The interview data – predominantly from the tertiary authorities – also highlighted the negative impact of the introduction of the Local Government Act 2000 that made the discretionary finance clause (section 137 of the Local Government Act 1972) obsolete. This was especially since, as established earlier in this thesis, the discretionary finance clause was relatively widely used by authorities. One of the elected members from authority C

highlighted that “there is a substantial overlap with the old section 137 [Local Government Act 1972] ... but it’s not geographically or administratively restricted like section 137”

The reduction in public sector expenditure - and the potential consequence that local authorities will retreat to providing core-services - raises another question about the future of the role of local government. This could provide an opportunity to facilitate a renaissance of municipal government or alternatively a wide re-negotiation of the role of local authorities, and particularly their community leadership role. One senior legal officer from a large urban principal authority also highlighted a disjunction in policy areas, between government departments that emphasises the renegotiated role for local government, stating that:

“It’s quite interesting really because different ministers seem to be taking a different tack in relation to local government, because if you look at Mr Gove in relation to education then the role of local authorities will be greatly decreased over the coming years. Whereas if you look at Mr Pickles and the localism agenda in relation to local government then possibly there’ll be greater role for local government, if there is a greater role then they need to make sure they’ve got the power to do it and actually the PoWB seems to fit that role reasonably well”

The interview data also reflected that the LAML judgement affected the usage of the PoWB. Whilst the interview data did reflect that the LAML judgement had an impact, the data presented two contradictory findings. Broadly speaking, the interview data reflected that some officers and members thought that the LAML judgement did not hinder usage of the PoWB because it defined the parameters of the PoWB. Other officers and members felt that the LAML judgment did inhibit the use of the PoWB because the ruling exposed several serious flaws in the PoWB that could prove to be lethal to its perception as an enabling power. One senior legal officer from a large principal authority, who felt that the LAML judgement was helpful, stated that:

“Actually, funnily enough, I think that my view on LAML is that it’s one of those situations where to have something like that does more good than bad. An example where you’re glad that you aren’t the authority but



actually the truth of the matter is that it has highlighted and brought to the fore the limitations of the PoWB. It will be interesting to see what extent publicity for LAML has actually pushed forward the General Power of Competence debate. There was a lot of publicity around it, and still is. Actually, what they were seeking to do was perfectly sensible and they lost out on a technicality.

The legal officer also highlighted the main alternative point i.e. that the LAML ruling exposed serious flaws in the legislation. Another senior legal officer from a medium sized highly-urbanised principal authority reflected that:

“I think there are several flaws that case law has brought up. I think the difficulty is [present] because most lawyers look at it and think ‘actually the case law all suggests that this restricting rather than broadening the use of section 2. We’re not going to push [forward]; we’re going to be cautious about going too far down that route. So I think from that point of view, it’s not sufficient. That’s partially because of the way it’s been interpreted, I think the spirit would have been sufficient. I think there needs to be a determination in a sense about whether or not, do we actually envisage that local authorities should do whatever they can to minimise their costs – like the Insurance case – but some things that may be for purely financial gain are we happy with that? I think because at the moment – let’s face it – money is very important to local authorities and finding the best ways of maximising what they can do with their money is also very important.”

Another senior legal officer acknowledged the impact that the LAML ruling had on discretionary activity in that authority, but reflected that “actually in light of LAML, the legal analysis of what was done was much more closely scrutinised but I had no concern that we could use it even post-LAML”. This finding would seem to imply that while the LAML ruling clearly had a detrimental impact on the use of the PoWB; it may not have represented a mortal blow to it as a discretionary power. As the case law suggests a restriction of the PoWB, this could deal reputational damage to the PoWB as a subtler enabling power. Whilst the data does highlight that some local authorities may not engage the PoWB in the future as a result of the ruling; the data does not reinforce the conclusion relating to reputational damage. The senior legal officer from a medium sized highly-urbanised principal authority did highlight an area for improvement that could reinforce the PoWB, stating that:

“I suspect that one of the things that would be useful would be clarity about what the power is meant to encompass. Is it purely meant to encompass a positive individual [sense of] well-being for either one person or for a group within the community? By having the best use of its money from the local authority and I think there is a distinction between the two types. It would be useful to have clarity about whether or not it is all-encompassing and it's to enable local authorities the best possible service for a community in the best possible way, including getting more 'bang for its bucks' and doing things in a way it think is the best value or whether it's much more specific about a tangible benefit to the community – rather than a slightly more ethereal benefit.”

With these findings in mind, it might be precise to assume that the LAML ruling did limit the strategic autonomy of local authorities – rather than the operational autonomy – as the evidence would suggest that authorities (especially those that would fall into the *Proactive* category in the typology) are still engaging in guerrilla discretionary activity. The LAML ruling clearly impacted on the mortality of the PoWB, which has implications for future discretionary activity, any potential General Power of Competence and the way that officers and members perceive vires.

## Chapter 10 – Conclusion: localism, parochialism or tokenism

This thesis has explored local authorities' perception of ultra vires, demonstrated the factors that can impact on the usage of the PoWB and the engagement of wider discretionary activity, and the ways that interaction between central government and local authorities can influence the role of local authorities. This chapter aims to highlight the key findings uncovered by this research.

The key findings are that:

- ***The PoWB has not permanently offered the majority of local authorities' greater autonomy.***

Prior to the introduction of the PoWB, there is a perception that local government was shackled by constraints imposed by central government. Leading academics highlight that some local authorities were able to exercise choice or discretion within their constraints, but the challenge was identifying areas for discretion (Pratchett and Leach, 2004). The previous discretionary power, sc.137, had enabled authorities to engage in discretionary action. However, the introduction of the PoWB made sc.137 obsolete. Whereas research conducted into the use of sc.137 reported that 92% of local authorities made use of sc.137 (ODPM, 1999). As highlighted earlier, local authorities perceived sc.137 as a power of last resort; although only a minority of authorities favoured change, citing that sc.137 provided essential flexibility (ODPM, 1999).

Immediately after its introduction, central government announced its intention that the PoWB represented a power of first resort for local government, a significant improvement on the previous sc.137. One of the key findings from this research was that the PoWB was not understood as representing a power of first resort for the majority of local authorities. In fact, a significant trend in the data reflected that the PoWB actually represented a power of last resort for

local authorities. That is to say, that the previous discretionary power (sc.137) had been more useful than the PoWB because it contained a discretionary finance clause that allowed authorities to raise limited discretionary finance. In contrast, the PoWB did not allow authorities to raise limited finance, nor incur debt, until several years after the inception of the PoWB. This attitude towards the PoWB was found in the majority of case study authorities and scoping interviews.

The interviews from case study authorities B and C particularly highlighted this attitude. Even though, in authority B, the PoWB enabled discretionary action, the PoWB was regarded by officers and members as “messy” and potentially contradictory. The discretionary action conducted in authority B had strong momentum behind it and enjoyed support from senior officers and senior members. Therefore, it is plausible to assume that with the same discretionary resources (i.e. finance) in place the extra-statutory activity may have occurred without the PoWB being present. As highlighted earlier, the PoWB assisted officers in authority B in defending their autonomy from central government criticism. As such, without the PoWB, officers may not have been able to effectively defend their discretionary activity from central government. Even so, this does not automatically mean that the extra-statutory activity would not have occurred but that the PoWB offered additional assurance to the authority, although it did not permanently increase the authority autonomy.

In contrast, interview data from authority A reflected that officers and elected members acknowledged the vulnerability of the PoWB, but continued to use it to support discretionary activity regardless of its vulnerabilities. Officers and members acknowledged that the PoWB offered a “hook” to carry action; if the PoWB had not been there, officers would have authorised activity via another route. One senior legal officer from a large rural principal authority surmised the role of the PoWB by highlighting that if the PoWB – as an option to support discretionary activity – had been removed, then legal officers would have searched for an alternative method to provide assurance. The interview data from the tertiary authorities seems to question the notion that the PoWB offered

tertiary authorities any additional autonomy at all – whether temporarily or whether that autonomy has since been undermined.

Authorities C and D, broadly speaking, reflected that the PoWB offered tertiary authorities restricted autonomy because of the range of limitations, caveats and pre-conditions on its use. That is to say, elected members seriously questioned the rationale that the PoWB would increase the autonomy of tertiary authorities' whilst attaching so many caveats. The elected members from authorities C and D uniformly reflected that the PoWB didn't enable the majority of tertiary authorities to engage in extra-statutory activity.

One member from authority C highlighted that one specific pre-condition of using the PoWB was that the council must have achieved Quality Council Status; whereas the vast majority of neighbouring tertiary authorities did not have Quality Councils Status, so were not eligible to use the PoWB. Therefore the majority of neighbouring tertiary authorities in the surrounding area couldn't use the PoWB, which may represent a wider trend amongst other tertiary authorities. That is to say, as a result of the pre-conditions and caveats the majority of tertiary authorities do not hold Quality Council Status and therefore cannot use the PoWB. The assumption that the PoWB represents an enabling power for tertiary authorities is inaccurate.

Elected members from authorities C and D also highlighted the limitations of the legislation that contained the PoWB itself. One member specifically reflected on the de facto limitation created by the lack of discretionary finance. Another member highlighted the complications that apply when local groups take on projects. That is to say, the conditions on the PoWB limit its usage due to a combination of the restrictions and the lack of finance, as local groups' projects "are not black and white". Moreover, the impact of secondary legislation on the PoWB underlines its auxiliary status. That is to say, the consequence of the LAML judgement may have significantly altered the perception of the PoWB as a power of general competence. Officers and elected members from the tertiary authorities do not offer comment on the effect of the LAML judgement,

and the interview data from the principal authorities underlines the negative effect it had on the PoWB; particularly, the effect that the LAML judgement had on local government legal officers' perception of the PoWB.

- ***The risk-averse nature of local authority legal officers, and their function as 'gatekeepers', can inhibit the use of the PoWB.***

Discretionary activity, initially, does have significant issues that need to be addressed – such as stability within the authority, awareness and the availability of resources – before authorities can successfully engage in extra-statutory projects. This research project has outlined that the most significant determination in discretionary activity is the attitude and wider culture of the authority. This key finding emphasises the critical role that senior local authority legal officers play in local authority discretionary activity.

As this research has shown, the majority of local authorities are cautious (and in some cases outright fearful) about exposing the authority to operational risk. This research has found that local authority legal officers can act as gatekeepers in the development of discretionary projects. Overtly risk adverse legal officers can act as barriers to the adoption of the PoWB, and engagement in discretionary projects. Legal officers with proactive attitudes towards extra-statutory activity can act as facilitators to steer policies or projects towards successful outcomes.

Although legal officers from authority A could not be classified under the risk adverse category, officers recognised the role that legal officers can play in blocking discretionary projects. Senior officers and members from authority A recognised that lawyers' risk averse nature can inhibit activity. In contrast, from one of the scoping studies, one senior local government legal officer underlined the positive impact that legal officers can have on discretionary projects by acting as facilitators "we try to make sure that they [policy officers] can do good things".

Conversely, from another of the scoping studies, one senior legal officer from a large rural principal authority highlighted that members “can’t just do anything they want” and are largely constricted by legislation. The officer further highlighted that the introduction of the PoWB offered such a broad range of possibilities that traditional legal officers struggled with the concept; as highlighted earlier, where other powers enabled a specific function, the PoWB allowed a significant range of discretionary action so that traditional legal officers conceptually struggled with the PoWB. The consequence was that legal officers returned to existing function related powers that they already possessed.

The interview data seems to suggest that the LAML judgement acted to reinforce the cautious attitude of many legal officers. This thesis has discussed the impact of the LAML judgement on the statutory basis of the PoWB; however, the LAML judgement also had a significantly detrimental impact on legal officers’ perception of the PoWB. Whilst some proactive legal officers adopted the view that the LAML did not cause significant legislative problems, a significant majority of legal officers signalled that the LAML judgement exposed serious flaws in the PoWB legislation that solidified many legal officers’ risk aversion.

From the four case studies, and the scoping studies, studied as part of this research, it is clear that the decision to engage in extra-statutory activity is complex and can be (in some cases) extremely fragile. The factors associated with making successful discretionary intervention have been outlined in this thesis; it is clear that the process of demonstrating autonomy in some local authorities remains elusive. All of the case study authorities did demonstrate varying degrees of autonomy, which have been categorised in the local government typology; despite the restrictions, caveats and limitations placed on use of the PoWB. Nevertheless, a significant degree of further autonomy could be demonstrated by the majority of local authorities. In most cases, local authorities do not demonstrate their autonomy because of the attitude towards discretionary activity and the resources available to the authority. If the

authority, importantly the senior officers and members, demonstrate a proactive attitude towards engaging discretionary activity then the chances of successful extra-statutory activity significantly increase.

- ***The attitude of officers and elected members, and the organisational culture of an authority, is the single greatest determinant of a decision to engage discretionary services.***

Whilst the case study authorities differed in terms of political control, process, local authority type and the demographics of the local area, the impact that attitude had on discretionary activity remained significant and the relationship between proactive attitude and discretionary activity was similar across all the case study authorities. This was found in all four local authorities and all the majority of the scoping interviews. Where officers and members regarded the PoWB as, broadly speaking, an enabling power, they were willing to expose the authority to a degree of risk because the PoWB offered an element of risk assurance. When the PoWB was accepted as an enabling power, the authority was more able to exert its authority and successfully engage discretionary activity. Although this could be applied throughout the case study authorities, this was the case in authority A.

Officers and elected members from authority A demonstrated a willingness to expose the organisation to risk and to deploy the PoWB to justify discretionary services. Where officers and/or members demonstrated a cautious attitude towards the PoWB, and engaging in discretionary activity, this could present a solid challenge to the provision of non-statutory services. To an extent, amongst the case study authorities, this cautious attitude can also be observed in authority D. Even so, authority D has demonstrated discretionary activity suggesting that a cautionary attitude does not act as a mortal block on discretionary activity. The interview data would seem to suggest that discretionary activity (and use of the PoWB) is less successful where a cautionary attitude is adopted.



The wider organisational culture of ambition, within an authority, was also found to be an equally significant determinant of successful engagement of discretionary services. Within the case study authorities, authority B could be highlighted as example of an authority that has demonstrated a culture of ambition – in their defence of their discretionary action from central government. Organisational ambition could be found, to a lesser extent, in authority C – in their ambition to provide more non-statutory services. There are, however, few examples of organisational ambition.

When the Government introduced the PoWB, they left a void of solid ground for local authorities to advance upon. As the PoWB made the previous discretionary clause obsolete, local authorities had no formal structure or path to follow that would enable them to exert their autonomy. Prior to its introduction, the PoWB was not an established legal duty even though a power of general competence was firmly established in international law. Whilst it is positive that central government recognised the positive influence the introduction of a general enabling power would have on local authority discretionary activity, the introduction of the PoWB did not completely maximise the potential of an enabling power.

The New Labour Government's rationale behind the introduction of the PoWB rather than the introduction of a power of general competence remains uncertain. The distinction was far from semantic and the practical impact was significant. Although central government regarded the PoWB as a power of first resort, the majority of local government officers and members interviewed did not share this view. A number reflected that it actually formed a power of last resort in their authority. The role of senior legal officers in the decision to engage in discretionary activity will be examined later in this chapter.

The inclusion of the phrase 'well-being' in the legislation engendered further uncertainty about the PoWB as a general enabling power, which emboldened the cautionary attitude adopted by some officers and members. The consequence of the inclusion of 'well-being' in the legislation was an increased

attitude of uncertainty, which left the adoption of non-statutory services vulnerable to those who adopted a risk averse attitude to discretionary activity.

As highlighted earlier, where Dooris (1999) reflected on the tendency of certain professional groups to adopt particular language, the inclusion of well-being in the duty seems to have acted as a barrier to increased levels of adoption of the PoWB. As the widespread definition of well-being remains elusive, the inclusion created greater uncertainty. The absence of operational examples of uses of the PoWB may have solidified such uncertainty. The initial absence of operational examples of the use of the PoWB acted as a de facto blockage for local government officers that inhibited the use of the PoWB. Even though the PoWB enabled local authorities to do anything, besides incur debt, expenditure or engage in discretionary action for sole finance benefit, authority legal officers interpreted the PoWB narrowly. When scrutinised, the PoWB was interpreted narrowly by the Courts as well (i.e. the LAML ruling restricted the scope of power). This interpretation highlights that it is not a minority of overly cautious risk averse local government lawyers that recognise the potential faults of the PoWB.

- ***In the absence of a culture that fosters organisational ambition, the absence or withdrawal of discretionary funding tends to limit the engagement in discretionary activity.***

The impact that attitude – and the wider culture – that an authority adopted was the single biggest determinant towards the engagement of discretionary activity. The availability of discretionary finance was also a significant factor. The interview data highlighted where discretionary finance was limited, and the availability of the organisation's resources and this restricted the effective engagement with discretionary services. The interview data suggested that discretionary finance enabled special projects and (to an extent) reduced risk aversion. The availability of discretionary finance offered an element of risk assurance because of the greater accessibility to resources.

Within the case study authorities, in authority A the availability of discretionary finance enabled a wider breadth of special projects. As a large principal authority, authority A could draw upon a significant resource-base without discretionary finance. Authority B could also be seen as an example of the impact of discretionary finance on the take-up of discretionary services or projects.

However, authority B also had its access to discretionary finance limited as a result of the reduction of public sector expenditure. This enabled (to a degree) officers and members to reflect on the impact that the restriction of finance had on discretionary services. The interview data reflected that the presence of discretionary finance had facilitated discretionary activity, and that the impact of limitation on funding would inevitably restrict such activity. In contrast, the tertiary authorities involved in the research reflected on the negative impact that the limitation of finance would have on non-statutory activity.

Authorities C and D did not recognise that the limitation on finance would act as a significant inhibitor. Authorities C and D reflected that the statutory caveats, restrictions and pre-conditions placed on use of the PoWB itself acted as bigger inhibitors than the limitation of discretionary finance. That is to say, authorities C and D did not acknowledge the restriction on finance as an impact, as severely as principal authorities, on their decision to engage discretionary activity. Either they do not allow the restriction to impact on their decision, or tertiary authorities face more pressing concerns when acting outside the usual course i.e. fulfilling the pre-conditions and acting with the restrictions.

In a future political landscape that includes reductions in public sector expenditure, which will increase the pressure on local authorities to achieve greater efficiency savings, this finding will not encourage local authority discretionary activity. Even though central government can emphasise the importance of structural change, and de-emphasise the importance of the fiscal environment, local government's resource base will remain crucial in introducing innovation and discretionary activity. Officers and elected members from all the

case study authorities acknowledged the importance of embracing innovation and introducing radical change into the local delivery of public services. Whilst acknowledging the importance of innovation, few of the interviewed officers and members offered insight into a method to achieve radical innovation.

As the majority of the interview data from this research suggests, authorities with access to finance that have their availability to funding withdrawn will retreat into a core service-delivery model and reluctantly abandon their community leadership role. A number of officers and elected members recognised this threat to discretionary activity; although they did not acknowledge that it would automatically reduce the activity beyond their traditional remit.

This could be seen to an extent across the case study authorities, Authority B presents a strong example. As a local authority covering a number of areas of deprivation it has received local area based grants to boost the local authority area. This included activities well beyond their traditional remit. The restriction of the availability of discretion finance could present a barrier to further engagement beyond the core-service model. Officers and elected members accepted that further engagement in discretionary activity would be unlikely as a result of the reduction in public sector expenditure.

The majority (although not all) of officers and members recognised that this reduction in expenditure may present a false economy in the local area. Some of the discretionary activity already being undertaken had reached a crucial balance, which could then continue without funding at the same level. Furthermore, some officers and elected members from authority B rejected outright the assumption that restriction of finance would directly limit the degree of discretionary activity. However this rejection may be a symptom of a culture of pro-activity and organisational ambition that authority B ably demonstrated.

However, authority B presents the exception rather than the rule itself. The data from the scoping interviews, as well the majority of the case study

interviews, reflected that – in the short term at least – local authorities would retreat into their traditional core-services model.

- ***There is a lack of awareness about the level of autonomy that local authorities are able to demonstrate.***

As highlighted in the introduction, this thesis aimed to explore the impact of the PoWB on local government's autonomy and whether this new discretionary power would facilitate a shift from New Localism towards a genuine autonomy for local government. As the findings suggest, the PoWB did not significantly increase the degree of autonomy that local authorities are able to demonstrate.

In the same way as Wilson and Game (2006) categorise degrees of decentralisation of power from central government to local government, definitions could also be established for categories of autonomy. The bulk of local autonomy, like an iceberg, remains hidden from the researchers' view; whilst only the outcome (autonomous local government) can be observed. From a deeper perspective, research can reveal the aspects of local autonomy beneath the surface that influence the degree of autonomy that authorities can exercise. The data from the case studies reveals that local autonomy has different component parts that contribute to autonomous local government. The following sub-headings highlight the distinction between the types of autonomy, and highlight the different types of freedoms (Political, Statutory and Applied freedom) that contribute to autonomy.

- *Degrees of local autonomy*

This research has defined two distinct categories of local autonomy, strategic autonomy and operational autonomy (see figure 13, page. 213). Both strategic and operational have component parts that enhance or reduce the overall autonomy of the authority. Any strategy to achieve overall genuine local autonomy should aim to increase both the strategic and operational categories. Such a strategy, to achieve genuine local autonomy, would require a multi-

stage action plan that enhances the component parts unilaterally. Whereas, a deeper inspection would highlight that the PoWB only represents one component part. Later in this chapter, the component parts of both strategic and operational autonomy will be outlined.

The research data would seem to suggest that the introduction of the PoWB may have been aimed at increasing the strategic autonomy of local government, the interview data also suggests that local authorities' operational autonomy was in fact reduced by other contemporary factors. Whilst the introduction of the PoWB may have been intended to increase both strategic autonomy, by acting as a power of general competence, and operational autonomy, by acting as a power of first resort that could enable local authority discretionary action, the findings would suggest that neither aim has been accomplished.

As highlighted earlier in this chapter, both the strategic and operational autonomy categories contain more defined components. In reference to the relationship between local autonomy and local democracy, as highlighted in Chapter 1, Pratchett (2004) highlights a distinction between types of freedom. The statutory freedom of an authority affects the strategic autonomy. The political freedom and the applied freedom of an authority affect the operational autonomy; whereas the financial freedom of an authority affects both strategic and operational autonomy.

- *Statutory Freedom*

The PoWB enhanced the statutory freedom available to local government, which enhanced authorities' overall strategic autonomy. However, the findings of this research suggest that authorities' enhanced autonomy is limited due to the impact of the LAML ruling. The data suggested that the level of political freedom available to an authority can considerably enhance the degree of discretionary activity exercised by an authority.

- *Political Freedom*

Political freedom which enhances the operational autonomy of an authority can be promoted by political determination – or political stability – from elected members on certain projects. Political freedom can be reduced by political instability within an authority. The data from the case study authorities emphasised the significance that political instability can have on discretionary services. Officers and members from authority C recognised that whilst their authority was politically stable, similar neighbouring authorities exhibited significant political instability which acted to deter action beyond the local authority's traditional remit, whereas officers and members from authority A acknowledged the importance that political determination can play in engaging discretionary projects.

- *Applied Freedom*

Principal authorities' applied freedom has been restricted by the abolition of the sc.137 discretionary clause and an absence of pro-activity and wider cultural ambition; whereas tertiary authorities' applied freedom has been restricted as a consequence of the pre-conditions, caveats and limitations. In the future, there is a significant risk that authorities' applied freedom and financial freedom would be reduced by the restriction in public sector expenditure. Financial freedom could enhance the strategic autonomy of local government by introducing a structural reform of local government funding to create a more long-term sustainable business model for local authorities that would (as highlighted) further enhance their strategic autonomy. The level of discretionary power and autonomy available to authorities remains significant; whereas the majority of local authorities seem ignorant of the autonomy accessible to them. Importantly, this ignorance is not definition by structural type i.e. between principal and tertiary authorities. That is to say, tertiary authorities do not demonstrate greater ignorance of their autonomy simply because they are smaller organisations. Amongst the case study authorities, awareness of their own autonomy was high - particularly in authorities A, B and C, although

awareness of the authorities' autonomy was demonstrably lower in authority D and in some of the scoping interviews.

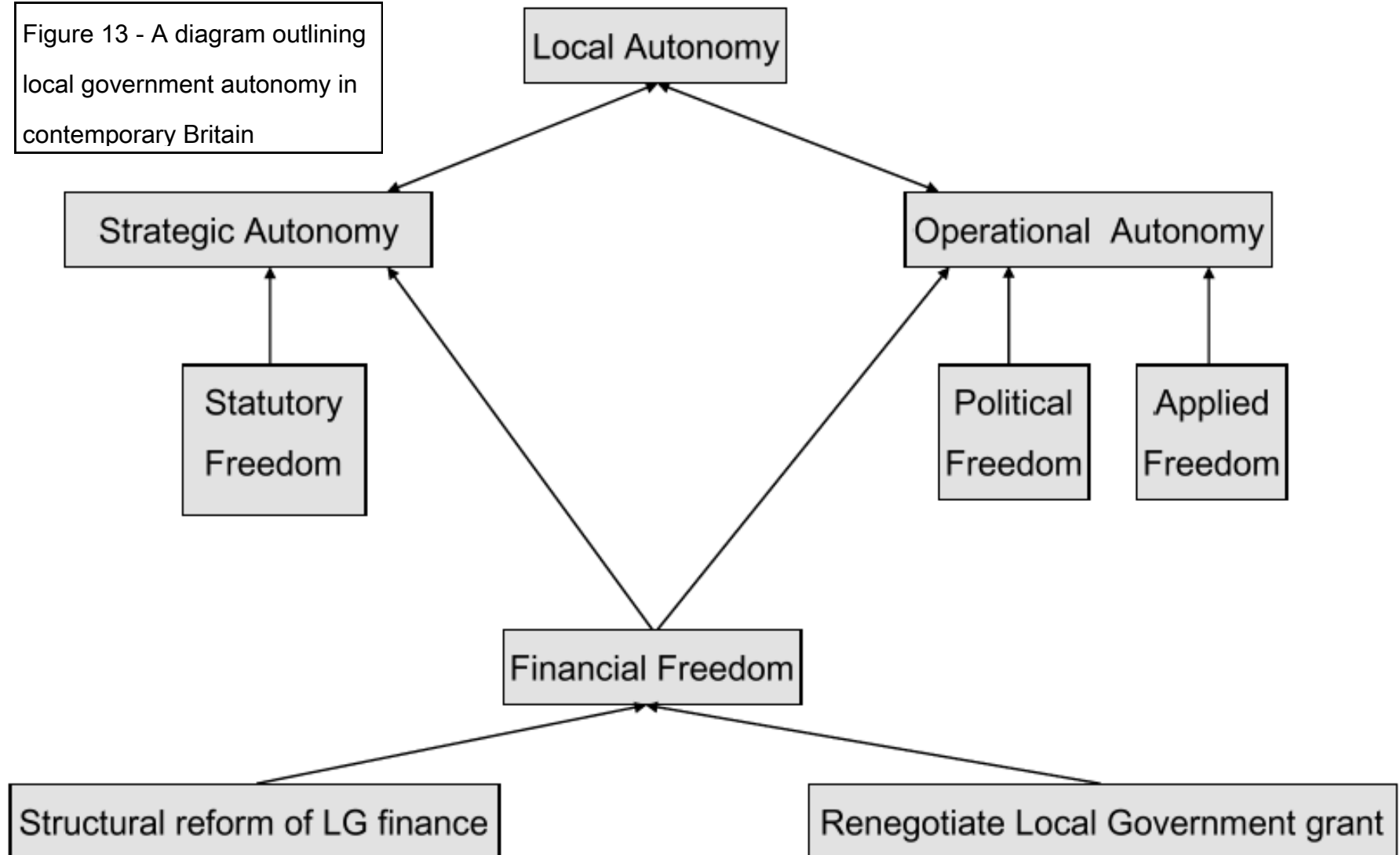
Officers and elected members from authority A especially demonstrated impressive awareness of their autonomy, but officers reflected that many authorities were not as aware citing that "any authority worth their salt wouldn't need a PoWB" to engage in discretionary activity. It is worth noting that, due to a restructure, authority A is a newly created authority. As such it does not have a history of risk aversion or institutional immobility that serves to inhibit their activity and their autonomy. The lack of historical context of the organisational could serve to promote proactivity and encourage an outward looking approach to community leadership.

Officers and members from authority D demonstrated a significant awareness about the restrictions and limitations on the authority's 'operational' autonomy, which may have affected their perspective on the authority's overall autonomy. That is to say, the officers and elected members from authority D emphasised the various restrictions on the PoWB without acknowledging the discretionary power and access to greater autonomy that it offers authorities.

This finding could assist in explaining the low levels of usage of the PoWB cited by Pickles (Williams, 2010). That is to say, if authority officers and members are focussing on the restrictive elements rather than the enabling elements, this could create a self-reinforcing scenario that serves to act as a barrier to local autonomy. The findings from this research would support this conclusion. Where authority officers and elected members emphasise the elements and components that restrict local government's autonomy, this accentuates any risk aversion or cautionary attitudes, which serves to limit the adoption of a Proactive attitude and stop authorities' 'seizing' their autonomy. Authorities A, B and C serve as examples of authorities that have broken the organisational immobility and 'seized' their autonomy. Whereas authority D, and a number of the scoping studies, underline the key finding that authorities struggle to exert their autonomy because of a lack of awareness.



Figure 13 - A diagram outlining local government autonomy in contemporary Britain



- ***Where there is stability, there is more likely to be strong officer-member collaboration, which increases the likelihood of successful discretionary activity.***

The attitude of officers and members, and the culture within an authority, was the most significant determinant, whilst the influence of political groups within the authority also played an important role. The research found that, unless the context and history of the authority acted to facilitate a proactive attitude towards discretionary activity from the majority political groups, then the consequence would be the reduced likelihood of successful engagement in discretionary activity. The research also found that political stability could dramatically increase the chances of successfully engaging in discretionary activity.

Within authority B, there was a tendency of the Labour group to dominate the authority. This is due to a strong history of dominant Labour control in the authority. This enabled the majority Labour group to be comfortable with their members, which facilitated trust between officers and members. As such, officers and members developed a robust working relationship as the majority group's political control of the authority was likely to continue beyond the near future. The opposition groups within the authority had realistic expectations about their role; as such, the majority political group did not allow superficial political attacks to detrimentally impact on the authorities' discretionary activity.

On the other hand, in contrast, in authority A, there was no historical context or background for the authority because it was only recently created – due to a restructure. Even so, this lack of historical context may have acted as a *de facto* boost to facilitate a proactive ambitious culture within in the authority. Furthermore, the majority Liberal Democrat group within authority A exercised a robust majority over the dominant opposition group, and that could have further facilitated an ambitious organisational culture within the authority by engendering significant trust between officers and elected members.

The interview data from authority A accentuated this conclusion. One leading elected member from authority A acknowledged the high level of trust between the officers and members within the authority, reflecting that inter member-officer trust could facilitate open and frank conversations that may not otherwise have occurred. As highlighted previously in this thesis, elected members of tertiary authorities do not act as political agents in a similar manner to elected members of principal authorities. The interview data from authorities C and D has reinforced the importance of stability in facilitating solid relationships between officers and members. In tertiary authorities, however, political stability was de-emphasised but stability amongst elected members was given significant emphasis.

Officers from authority C reflected that durability amongst elected members was especially crucial – particularly when engaging in specific discretionary projects. That is to say, officers underscored their belief that “political instability adds to the risk”. Officers further reflected that some elected members may delay tackling a project until after an election, and could adopt a wait-and-see attitude. One senior officer from authority C reflected that members might say ‘why should I take this risk when we may come a cropper, we’ve got an election just around the corner and we may come out of office’ – although the officer recognised that members within authority did not demonstrate this attitude. In contrast, elected members from the authority compared authority C with some neighbouring authorities reflecting that trust and confidence create additional assurance when tackling major challenges or engaging in extra-statutory activity.

It is important to note that, the principal authorities in the surrounding areas all have a history of dominant control by the Conservative Party. Therefore, it may be more accurate to highlight the importance of durability of elected members – rather than political stability – being significant in increasing the likelihood of discretionary activity. Regardless, of this, the risk created by political instability cannot be removed; since the only sure way to remove political instability would be to remove elected officials or political parties. The data suggests that (where

it occurs) political instability reduces the likelihood in successful deployment of discretionary activity. Officers and members from all the case study authorities acknowledged the risk that political instability posed to discretionary service provision.

The stability of an authority, or the durability of the elected members of an authority, directly affects the culture within an authority. If individual elected members continue beyond a single term, thereby build working relationships to increase trust and confidence with individual authority officers, this can create assurance that promotes pro-activity in the authority and can contribute to creating a culture of ambition. The longer a member serves an authority the more experienced they become, and potentially more comfortable exerting autonomy.

An authority's culture directly impacts on its attitude towards exercising its autonomy. Therefore the importance of political stability cannot be underestimated. An authority's discretionary activity may suffer through lack of resources, the stability of an authority can demonstrably affect its attitude towards exercising autonomy.

### ***Areas for future research***

On the whole, local authorities exert (or are able to exert) more discretionary power and operational autonomy than they currently acknowledge. This research has added to current knowledge on local government by highlighting key findings that relate discretionary power and local autonomy. These findings would seem to highlight that the original hypothesis – that the PoWB had low levels of usage because risk averse officers didn't fully understand the autonomy it offered – was partially inaccurate.

The original hypothesis may contain a measure of accuracy. The data from this research would seem to reflect that the PoWB did increase local government's autonomy – their strategic autonomy – but other limitations were placed on local

government's operational autonomy. That is to say that, the caveats and pre-conditions placed on tertiary authorities' use of the PoWB and the lack of available finance for principal authorities limited the operational ability of local authorities to adopt the PoWB and engage in discretionary services. The impact of these restrictions placed on local authorities' operational autonomy created functional barriers to achieving genuine local autonomy.

The data suggest that the majority of local authority officers adopted a cautious attitude towards the PoWB which acted to inhibit widespread usage of the PoWB. Whilst the PoWB may have enabled Proactive local authorities to exercise more autonomy, those Proactive authorities most likely would have 'seized' their autonomy and engaged in discretionary projects without the PoWB. As highlighted earlier, the PoWB rests upon a more fundamental restriction. The legislation itself that allows local authorities to engage in anything to promote the economic, social or environmental well-being of local residents created a de facto limitation by creating additional uncertainty. This was the case given the decision not to introduce a power of general competence, instead introducing the PoWB.

After considering the findings of this thesis, further research could focus on the impact of a future discretionary power on local autonomy – particularly on the role of senior legal officers; equally so, research could explore the impact of the reduction in public sector expenditure on local government innovation and its relation to local autonomy. As has been observed through this research, local government officers' attitudes towards the PoWB affected its usage as officers did not have confidence in either the concept or the definition (i.e. a power of first resort).

These attitudes directly impacted on the autonomy that the authority exercised; therefore a well-established general discretionary power could serve to increase awareness about local authorities' autonomy. Future research could aim to update the findings of this thesis in relation to the evolution of local government autonomy. Future research could also aim to develop a strategy for local

government to seize autonomy that would enable local authorities to maximise their potential.

Clearly, this research could have significant implications for the future of discretionary legal power – specifically a power of general competence – and local autonomy.

## **Chapter 11: Post script – Implications of the research**

The research findings have significant impacts on the direction of travel towards greater localism in the future. The findings offer insight into the ‘failure’ (if it could be called that) of the PoWB, and present reasons for its lack of use. A future discretionary power could fall foul of the same failures as the PoWB. Two significant factors have changed the course of the debate on localism. First, the outcome of the 2010 General Election campaign and second the 2008 financial crisis and the ensuing recession. Dealing with the latter first, the financial crisis and consequent recession resulted in reduced public expenditure from central government. This has two direct impacts on local authorities.

Firstly, and most importantly because it would affect all local authorities, a reduction in the local government grant. The NLGN (2010) cites that some local authorities could face losing up to 33% of central government funding over four years. This reduction in expenditure is on top of previous realised efficiency savings.

Secondly, local area based grants were removed. These local grants represented the main source of discretionary funding for some local authorities. The outcome of the 2010 General Election campaign, a Coalition Government between the Conservative and Liberal Democrat Parties, altered the course of the localism debate because the Conservative Party committed to introduce a General Power of Competence (Conservatives, 2009). The Coalition Government’s ‘manifesto’ committed to the Government to localism and decentralisation (Cabinet Office, 2010). The following section will evaluate the implications of this research on a new discretionary power (a General Power of Competence), local government autonomy and the future of localism.

### *The Vires Gap: the PoWB versus a General Power of Competence*

“it will be a shot in the arm for local democracy. It will give councils a general power of competence. That is probably the single most important item in the Bill. It will turn convention in its head. It differs from

a general power of well-being in one vital aspect: instead of local authorities having to find a statute that allows them to act, the fun-loving legal advisers will have to find a statute that prevents them from taking action.

We know that the Labour Party considered a general power of competence, so what held them back? Apparently, the right honourable Member for Blackburn (Mr Straw) once argued that councils should not be allowed a general power because it would allow Islington to build a nuclear bomb. He is a much respected Member of the House and his worries should be taken seriously. I have good news. The residents of Islington and the rest of us can sleep safely in the knowledge that the Radioactive Substances Act 1993, the Nuclear Explosions (Prohibition and Inspections) Act 1998 and the Nuclear Safeguards Act 2000 will prevent Islington Council from obtaining weapons of mass destruction. In short, the power of general competence for councils does not simultaneously abolish all other laws of the land.”

Secretary of State for Communities and Local Government Eric Pickles

(HC Deb 17 January 2011 c561)

The proposed General Power of Competence (Conservatives, 2009; Cabinet Office, 2010) is a key provision of the Decentralisation and Localism Bill (Great Britain. Parliament. House of Commons, 2010), which is a central feature of the Coalition Government’s commitment to localism. However, the wording of the General Power of Competence may present a problem to its adoption by local authorities. What is the difference between a General Power of Competence (the Coalition’s proposal) and a Power of General Competence (that has an international precedent), is the difference semantic?

One of the key findings of this research was that overly cautious legal officers did not fully understand the PoWB, and therefore did not utilise it, due to confusion created regarding the language (i.e. the inclusion of well-being). This finding would seem to suggest that the General Power of Competence (GPC) could fall foul of the same confusion. Whilst the exact wording of the legislation, and the activities enabled by the relevant clause, might lead the officers and members from Proactive authorities to question the difference between the GPC and the PoWB, opinion remains divided. NLGN (2010) argued that a GPC would only be successful if it offered councils clear legal freedoms. However, NLGN (2010) also argued in favour of abolishing the Ultra Vires principle. Stevens (2011) highlights that although the GPC allows local authorities to act



in any way that does not break the law, it does not remove the Ultra Vires principle. As such some officers and elected may be concerned by what the GPC actually allows. Therefore, the GPC could suffer the same fate as the PoWB – low usage.

The GPC does prevent the Courts challenging local authority activities on the basis of the Ultra Vires principle, which prevents further damage similar to the LAML ruling. However, the previous Labour Administration did enable local authorities to act for financial benefit by including a relevant clause in statute (Great Britain. Local Democracy, Economic Development and Construction Act 2010). Therefore, what change does the GPC bring?

The GPC does offer the Secretary of State for Communities and Local Government the power of veto over authorities' discretionary activities - as a last ditch measure. For some *Cruising* or *Reactive* authorities, and for risk averse legal officers, this may enable caution. However, the removal of the threat of censure from the Courts – and another potential LAML ruling in the future – could act to reduce risk aversion and enable authorities to innovate. Furthermore, the DCLG (2011) assessment of the GPC concluded that it would result in fewer potential costs that may be accrued as a result of legal challenge. The GPC will

- allow authorities to act in their own financial interest to generate efficiencies and secure value for money outcomes and to raise money by charging for discretionary services and trade in line with existing powers.
- allow authorities to engage in activities, ruled by the Court of Appeal in the '*London Authorities Mutual Ltd*' (LAML) case, as outside the well-being power, such as providing certain indemnities and guarantees and engaging in speculative activities.
- provide the Secretary of State with a power to amend or repeal enactments that prevent or obstruct local authorities from using the power, and to remove overlapping powers.

(DCLG, 2011: p.9)

However, whilst the scrutiny of the Courts on the Ultra Vires principle has been removed, significant questions remain regarding whether the GPC will extend

authorities' legal assurance and reduce overt risk aversion. Limitations will still be in place on authorities (Great Britain. Parliament. House of Commons, 2010; DCLG, 2011). Authorities will still be required to act in accordance with statutory restrictions and limitations (DCLG, 2011; Decentralisation and Localism Bill. Great Britain. Parliament. House of Commons, 2010). Although the Courts are unable to provide scrutiny on an Ultra Vires basis, the Courts can still provide scrutiny over authorities' discretionary activities through other means (e.g. Equalities Laws, Public Procurement Framework and the Human Rights Act). The continued scrutiny of the Courts may leave the GPC vulnerable to similar LAML-style judgements, even though discretionary activities can no longer be found ultra vires. Discretion of the Judiciary remains a potential hindrance to local autonomy, and discretionary projects. Central government's removal (but not abolition) of the ultra vires principle may present a clear signal that central government wants local government to undertake bold projects – whether the judiciary is ready for local government to undertake those projects or not. Equally, the inclusion of 142 regulatory powers within the Decentralisation and Localism Bill (Decentralisation and Localism Bill. Great Britain. Parliament. House of Commons, 2010) may present mixed messages to the Judiciary.

“the attitude of the courts to the use of the general power will be critical. Not everybody was convinced that the courts were ready to grant councils a significant degree of leeway even after the general power is introduced. There will always be a high water mark where an authority will do something where the courts will say: we're not comfortable with local authorities being in that sort of area. Administrative law has always provided some natural boundaries where judges just weren't ready for things ... the judges clearly just weren't comfortable with what was going on and they were able to find ways to prevent it from happening.”

(Local Government Lawyer, 28<sup>th</sup> July 2011)

As public bodies, local authorities remain under judicial review but the GPC offers a degree of statutory freedom unparalleled by other public sector organisations. In written evidence to the Communities and Local Government Committee, on the GPC, Eric Pickles argued that the GPC would remove much

of the doubt regarding the scope of authority powers and the extent of ultra vires:

“Activities that individuals can undertake will no longer be able to be found to be ultra vires because they are not expressly provided for in legislation, or are of a type that are not normally associated with a local authority, or public body.”

(Great Britain. Parliament. House of Commons, 2011)

They remain public bodies open to potential challenge. Furthermore, specific safeguards remain in place – through secondary legislation – to ensure best use of resources. These are:

- the duties on an authority's chief finance officer to report to the council or cabinet when some part of its decision making machinery has made, or is about to make, a decision that would contravene the law or incur unlawful expenditure (Part 8 of the Local Government Finance Act 1988 and Part 1 of the Local Government and Housing Act 1989), The decision maker is then barred from taking action to implement the decision until they have considered the report.
- the duty of an authority to ensure that its financial management is adequate and effective, that it has a sound system of internal control which includes arrangements for the management of risk, to review the system of internal control at least annually and, based on the review, to approve a statement on internal control to be published with the annual statement of accounts (Accounts and Audit Regulations 2003)
- the duty to maintain an adequate and effective internal audit of the authority (Accounts and Audit Regulations 2003)
- the duty to balance the revenue budget annually (Local Government Finance Act 1992 and Part 2 of the Local Government Act 2003)
- under the Prudential System, the restriction of borrowing to what is affordable (Part 1 of the Local Government Act 2003).

(DCLG, 2011: p.11)

Some elements could embolden authorities' risk aversion. However, the Decentralisation and Localism Bill (Decentralisation and Localism Bill. Great Britain. Parliament. House of Commons, 2010), may represent one of the most significant public service reforms introduced by the Coalition Government (NLGN, 2010; Stevens, 2011).

“The reason why the general power of competence is so important is that it turns the determination requirements on their head. All those fun-loving guys who are involved in offering legal advice to local authorities, who are basically conservative, will now have to err on the side of permissiveness. That is a substantial change, and I would have thought that there would be no difference between parties on that matter. I believe that a general power of competence is better than a general power of well-being, because the latter had to be invented as a concept whereas the former is well accepted by local authorities throughout the world, which understand exactly what it means.”

Secretary of State for Communities and Local Government Eric Pickles

(HC Deb 17 January 2011 c562)

The presumption has changed. Authorities must no longer look for a reason to do something (as under the PoWB), but instead look for a reason not to do something (under the GPC). That is to say, authorities will be looking for specific prohibition in statute that would prevent discretionary action. However, the idea that as local authorities are creatures of statute – bound by the Ultra Vires principle – then the only method to induce change in local government is via a legislative route is opaque. Proactive authorities will utilise the extension of powers provided by the GPC, but the question of the availability of resources and how that availability affects authorities’ ability to exercise discretion remains. A thorough examination of structural reform to the way that local authorities are funded may offer innovative and original routes to greater autonomy for local authorities.

### *Local Autonomy*

The introduction of the GPC, and the Decentralisation and Localism Bill (Decentralisation and Localism Bill. Great Britain. Parliament. House of Commons, 2010) to deal with the issue of Ultra Vires offers a broadly welcome move to increase innovative practice in local government. By offering assurance to reduce overly cautious local authority lawyers, the GPC presents an incremental change.

“Will he give practical examples of issues that do not fall within economic, social or environmental well-being, on which councils will be

able to act? I am sure the House wants to be enlightened on how large the power is. Before the election, he said that he wanted to give councils the power to do anything other than raise taxation, Is that still his intention? The right honourable lady makes a reasonable point. She will be aware of problems with London authorities' insurance, and the general power of competence will deal with those. However, the question is, what is the difference between the general power of competence and the general power of well-being? The truth is that there is not much difference, and we welcomed the intention to introduce the latter, but only about 17% of authorities have done so. The reason for that is the innate conservatism of those providing legal advice, so councils have tended to err on the side of not introducing it"

Secretary of State for Communities and Local Government Eric Pickles

(HC Deb 17 January 2011 c561)

It is worth noting that the majority of local government lawyers are not overly cautious, nor are they risk averse. However, the power of veto for the Secretary of State combined with the total numbers of regulatory powers included in the Bill may present a buffer towards greater localism. As highlighted, when it was introduced into the House of Commons, the Decentralisation and Localism Bill contained 142 regulatory powers (Decentralisation and Localism Bill. Great Britain. Parliament. House of Commons, 2010). Dealing with the vires issue is necessary to secure and expand authorities' the discretionary ability offered in the PoWB. However, the restrictive Vires principle does not affect all local authorities – particularly those in the Proactive authority classification.

"[On the GPC] the Bill provides a power for councils in England to do anything lawful, and in that is broader than the well-being power. It makes clear that councils will be able to make decisions that involve activities anywhere in the UK or abroad, to do so for a change or for a commercial purpose, and whether the activity benefits the authority or local people, or, it appears, other benefit, for examples through the external provision of services to other organisations. The well-being power if repealed as far as England is concerned"

(Kitchin & Garfield, 2011)

With the GPC, it may take time to embed the possibilities within authorities that do not have cultures of ambition. Waiting for cultures of ambition to develop in Cruising and Reactive authorities may present a test to local autonomy. Whether there is another LAML-type case or whether a local authority advances

in a direction that central government is not comfortable with and uses its veto will test local government's GPC-enhanced autonomy. Vires is not the only factor impacting on discretionary activity. The availability of resources does affect all local authorities – to varying degrees – not just those authorities in the Cruising and Reactive classifications. Local authorities face significant reductions in public expenditure – potentially up to a 30% reduction (NLGN, 2010). The presumption from many officers and elected members is that severe reduction in expenditure would result fewer discretionary services. However, some of the findings from this research challenge the presumption.

In those organisations that lack a culture of ambition, discretionary funding facilitates discretionary engagement. Local authorities have to operate in an environment that is tighter in terms of the grant from central government. Therefore, officers and members may presume that the response to tightening finances is to retreat in a core-service provision model that does nothing beyond the deliver statutory services. Where special projects have reached a 'critical mass', they could continue beyond the withdrawal of discretionary finance and restriction of the central government grant.

However, this may only be the case for principal authorities. The findings from this research show that tertiary authorities are less vulnerable to funding withdrawal or restriction than principal authorities. The findings reflect that tertiary authorities' discretionary activity is more susceptible to caveats and pre-conditions (i.e. legislative blocks) than financial restrictions. An agenda to introduce genuine local autonomy that pursues a solely legislative direction, and doesn't include a structured review of the way that local government is resourced, would not fully realise the objective of genuinely autonomous local authorities. The Coalition Government's review of local government's resource may prove to be an opportune method to realise the local government's financial autonomy. Prior to the General Election, the Liberal Democrats committed to including a review of the way that local authorities are financed. However, the outcome of the review and whether it will follow the Layfield Inquiry (1974) and the Lyons Review (2005) (House of Commons, 2009) – i.e.

be kicked into the political long grass - or whether it will begin to dismantle economic centralism remains to be seen.

On the subject of a model of local authority, NLGN (2011) explores the future of local authorities' approach to providing public services post-reduction in public sector expenditure. NLGN (2011) presents parallels between emerging trends in the UK and the State government of California. Exploring the impact of tightening resources and shrinking budgets, NLGN maps the options for local government finance. Expecting some authorities to explore every function to achieve efficiency savings whilst accepting that other authorities will perform substantial retreats from service provision, NLGN alludes to a typology of different local authorities. Acknowledging that authorities will react differently to similar challenges, whilst others may face entirely different pressures, NLGN presents three scenarios:

- Local authorities in areas (such as the North East) clustering together into new regional federations to manage economic growth and share their services – with some having directly elected mayors.
- Local authorities may introduce 'pay as you go' public services for residents and selling their services to neighbouring boroughs, allowing them to cut council tax and perhaps even pay dividends to poorer residents
- Local authorities that try to commission most of their services might become 'residual councils' – a commissioning hub that directly delivers almost no public services.

(NLGN, 2011)

However, the three scenarios that NLGN explores focus on the reduction in public sector expenditure as the determinant of local authorities' future operating models, and their autonomy. Whereas the impact of reduction in public sector expenditure may be severe, it is not the sole determinant. An enabling power, whether it is a GPC or a future power of general competence, would enhance the statutory autonomy of local authorities. Autonomous local authorities could then be free to act as governments of their own localities that would better enable them to respond to local challenges. However, whether an enabling power would grant genuine autonomy would be the responsibility of central government, and remains to be seen.

### *Genuine autonomy: the future of localism*

The key issue for the future success of localism or local government, the best way for local authorities to sustain economic, social and environmental resilience is through genuine local autonomy. However, to address the question more accurately, it may be more practical to define types of local autonomy.

As Pratchett (2004) defines types of freedom, and Wilson and Game (2006) categorise degrees of decentralisation, this thesis (and the future of localism) may be accurately assessed by breaking autonomy into different categories. They are

- Financial autonomy
- Political autonomy
- Statutory autonomy
- Applied autonomy

A strategy to achieve all four modes of autonomy would produce genuine local autonomy. IPPR (2010) alluded to a need for a joined-up strategy to pursue genuine autonomy. In response to the publication of the Decentralisation and Localism Bill (Decentralisation and Localism Bill. Great Britain. Parliament. House of Commons, 2010), IPPR (2010b) stated that without local financial controls many authorities would struggle to demonstrate their control over their own finances. IPPR referred to the Bill as a 'cosmetic commitment' to 'lipstick localism' (IPPR, 2010b). How can local authorities attain genuine autonomy from central government in a period of tightening resources? Schmuecker (2011) asserts that the review of local government resources and funding will be the real test of the Coalition's commitment to localism. Schmuecker (2011) acknowledges that localism can have a lasting legacy on domestic politics in the UK. Tax Increment Financing, the re-localisation of Business Rates, reducing the number Ring-fenced finance streams and a GPC all represent incremental advances towards real localism (Schmuecker, 2011). However, at best, these



only represent advances in statutory and financial autonomy. A joined-up strategy to achieve genuine local autonomy should be pursued. The findings from this research would indicate that local authorities need to advance to 'seize' the autonomy on offer from central government. The findings suggest that local government can access more autonomy than many authorities currently acknowledge.

One of the key findings from this research suggest that one of the biggest inhibitors to 'Proactive' outward-looking authorities is the attitude of senior officers and elected members, or the wider culture within the organisation. Absence of cultural ambition within an organisation could facilitate a culture of risk aversion instead, where authorities retreat into core-service delivery and look inwards (organisationally) rather than out into their communities. Engagement in discretionary services could also be found to be vulnerable to overt risk aversion. Furthermore, the withdrawal of discretionary funding from authorities tends to limit wider engagement from the authority.

In a political environment that includes public sector spending cuts, reductions in discretionary spending are clearly a threat to some authorities, which may limit some authorities' wider engagement. Public sector reductions will reduce the financial autonomy of some authorities and their ability to exercise discretion. However, another finding suggests that many authorities are unaware of the level of autonomy that local government can exert – particularly those Cruising and Reactive authorities. Cruising and Reactive local authorities can exert their autonomy by utilising the statutory autonomy offered by the PoWB (and the GPC – when it's introduced) to advance to offer discretionary services and by innovation.

Equally, this research found that the PoWB has not permanently increased the autonomy of the majority of authorities. This is for a number of factors. Firstly, the inclusion of the phrase well-being in the legislation created uncertainty. The move from an internationally recognised power of general competence to the PoWB made some local government lawyers hesitant to adopt the PoWB.

Whilst technically the powers available to local authorities through the PoWB are expansive, in practicality they were less expansive and much less certain.

Risk averse local government legal officers, in their role as local authorities' 'gatekeepers', could inhibit innovative use of the PoWB and local authority discretionary activity beyond their traditional remit. Although it is important to note that the majority of local government legal officers are not overtly risk averse, and some champion the use of the PoWB, the majority did adopt a wait-and-see attitude. Indeed, those legal officers, and other members of the senior management team, in Proactive authorities did push the discretionary activity beyond their usual boundaries. Local authorities A and B, from the case studies, are robust examples of such authorities. However, the LAML judgement did detrimentally impact the perception of the PoWB as a valid enabling power. Even though the New Labour Administration patched-up the PoWB to immunise it against future LAML-style judgements (Great Britain. Local Democracy, Economic Development and Construction Act 2010), the damage had been done and a new broader enabling power was required.

Furthermore, the role of the Courts in the long term validity of the PoWB is an important contributing factor. Therefore the GPC, and the clause that would prevent Courts from ruling on an Ultra Vires basis in the future, is an important step towards genuine legal autonomy. However, it must be matched by local financial autonomy and applied autonomy, which must be joined by the political will (from central government) to support localism and a greater autonomous local government.

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## Appendices

### Appendix 1 – The Postal Survey Covering Letter

ADDRESS LINE 1  
ADDRESS LINE 2  
ADDRESS LINE 3  
ADDRESS LINE 4

Dear Sir or Madam,

I am writing to you to ask for your help in improving the knowledge about uses of the Well Being powers by Local Authorities in England.

All of your answers will be treated in the strictest confidence. Anonymised responses may be passed to any Local Authorities, if they request it. This is so that national patterns of usages of the Well Being powers may be established.

The questionnaire consists of five pages and should take no longer than ten minutes to complete.

If you have any questions or concerns about this survey please do not hesitate to contact William Holloway at [william.holloway@northumbria.ac.uk](mailto:william.holloway@northumbria.ac.uk) who would be very happy to assist you.

I very much hope you will be able to take part and feel sure that you will find it interesting. Thank you very much for your help in advance. Please return the completed questionnaire in the pre-paid envelope provided with this questionnaire by **(DATE)**.

Yours sincerely,

William Holloway

University of Northumbria

## Appendix 2 – the Postal Survey



### Local Authorities' usage of the Well Being Powers Survey

Since 2000 the Labour Government has passed a range of laws aimed at promoting democratic accountability and devolving authority to local government, this agenda was called "New Localism". The Local Government Act received Royal Assent in July 2000. Part one of the act introduced a new Well-Being Power, which enabled local authorities to promote the economic, social or environmental wellbeing of an area.

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#### **Section 1 – Views on the Power of Well-Being**

1.1 Has your Local Authority used its Well Being powers? Yes ☐ No ☐

1.2 **If yes**, what date was it initiated?

.....

1.3 **If no**, has your Local Authority examined and ruled out using the Well Being powers?

Yes ☐ No ☐

1.4 **If you have ruled them out**; why?

.....  
.....

1.5 In your opinion how widely understood are the Well Being powers;

	Broad ← Limited →				Unsure
a. In your local authority	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. In central government	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. In the Voluntary Community sector	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. In local public sector bodies e.g. Police, NHS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1.6 How should the cost of the Well Being powers be funded?

.....

.....

.....

.....

	Yes	No
1.6 In your opinion would there be greater take up / use of the well being powers if additional resources were available?	<input type="checkbox"/>	<input type="checkbox"/>
1.7 Should Well Being be an established sub-set of the new Comprehensive Area Assessment?	<input type="checkbox"/>	<input type="checkbox"/>
1.8 Do you think that the Power of Well Being should aim to target specific groups within the community? If yes, please give examples below;	<input type="checkbox"/>	<input type="checkbox"/>

.....

.....

.....

***If your local authority has not used the well being powers please go to section 2 of the questionnaire.***

1.9 Please indicate where the Well Being powers are focussed. Please tick all that apply.

Economic areas	<input type="checkbox"/>
Social areas	<input type="checkbox"/>
Environmental areas	<input type="checkbox"/>
Enhancing plans / strategies	<input type="checkbox"/>
Improving services for residents	<input type="checkbox"/>
Improving the general quality of life for residents	<input type="checkbox"/>

Other

.....

.....

### 1.10 Who were the initial proponents of use of the Well Being powers?

Local Authority officers	<input type="checkbox"/>
Local Authority members	<input type="checkbox"/>
Initiated outside your local authority	<input type="checkbox"/>

### 1.11 Could you give one example of a project or programme where the Well Being powers were used?

.....

.....

.....

## Section 2 – General views on the well being powers

### 2.1 Is the current legislation sufficient to genuinely promote Well Being?

Yes ☐ No

☐

### 2.2 Do you feel that the Well Being powers should be replaced by a new power of general confidence?

Yes ☐ No

☐

### 2.3 Has the use of Well Being powers within your local authority produced change in the following areas?

	increased	decreased	no change
Organisational performance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Delivery of council services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leadership role in the local community	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to influence regional / national policy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Meet the needs of specific groups	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to respond to negative external challenges e.g. credit crunch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### **Section 3 – Measuring Well Being**

3.1 How does your Local Authority measure Well Being?

.....  
.....  
.....  
.....

3.2 How should Well Being be measured by Local Authorities?

.....  
.....  
.....  
.....

3.3 What are the most appropriate indicators to measure Well Being?

.....  
.....  
.....  
.....

3.4 Should central government establish a comprehensive Well Being indicator set that could be used by local authorities?

Yes ☐ No ☐

3.5 Should measuring Well Being at the local level become mandatory?

Yes ☐ No ☐

### **Section 4 – General Details**

4.1 What type of Organisation do you work for?

Unitary Council	<input type="checkbox"/>
Metropolitan Council	<input type="checkbox"/>
District Council	<input type="checkbox"/>
County Council	<input type="checkbox"/>
London Borough Council	<input type="checkbox"/>



4.2 What size population does your Local Authority serve?

0 – 100,000	<input type="checkbox"/>
100,001 – 200,000	<input type="checkbox"/>
200,001 – 300,000	<input type="checkbox"/>
400,000 +	<input type="checkbox"/>

4.3 Which political party controls your Local Authority?

Labour	<input type="checkbox"/>
Conservative	<input type="checkbox"/>
Liberal Democrat	<input type="checkbox"/>
Other	<input type="checkbox"/>
No overall control	<input type="checkbox"/>

5. Please use the box below for any additional comments:

***Thank you for taking the time to complete this questionnaire.***

### Appendix 3 – the Covering Letter for the Interviews

William Holloway  
Department of Social Sciences  
Lipman Building  
Northumbria University  
Newcastle upon Tyne  
NE1 8ST

Dear XXXXXXXX,

I am writing to you to in relation to the original research I am undertaking as part of my PhD at the University of Northumbria. *My research is on Local Authorities and their use of the Power of Well-Being.*

The research entails conducting interviews with senior local authority officers with knowledge of, or experience in using the Power of Well-Being. The aim of the research is to establish which factors are influential in the usage of the Well-Being Power and to explore whether the Power is sufficient to genuinely promote the Well-Being of local people.

Since your Local Authority has pursued an ambitious community agenda and used the Well-Being Power in a creative manner, interviews with a small number of your colleagues would be invaluable in providing key information on this subject. The interviews would last no longer than 45 minutes and would explore different the aspects involved in the usage of the Power.

Should you consent to participate in this research project, it would be very helpful if I could interview the relevant officers in your authority. These could include a legal officer, a resources officer or an officer from policy services. The list of questions for each interview would be sent to the interviewee in advance

and the interview transcript would be sent to each participant after the interview for final approval, with the option of making alterations to the transcript if required. In addition, a copy of the final report would be provided when my research is complete for use within your Local Authority.

The research complies fully with the University's ethical requirements for research. If you have any questions or concerns please do not hesitate to contact me ([william.holloway@northumbria.ac.uk](mailto:william.holloway@northumbria.ac.uk)) or my supervisor is Professor Keith Shaw ([keith.shaw@northumbria.ac.uk](mailto:keith.shaw@northumbria.ac.uk)) and we will be very happy to provide answers for you.

I very much hope you will be able to take part in the research which will eventually aim to add to our understanding of an increasingly important and innovative area of local decision-making. Please contact myself or my supervisor if you require any further information.

Thank you very much for your help in advance.

Yours sincerely,

William Holloway

Department of Social Sciences  
University of Northumbria

## **Appendix 4 – The semi-structured interview questions**

### **Background questions:**

- How long have you been working here?
- What did you do before you worked here?

### **Questions:**

1. What do you understand by the term well-being?
2. Within which national or local policy context has the term emerged (e.g. legal powers, health, environment etc)
3. How widely is that understanding shared across your authority?
4.
  - a. Can you give examples of the how your organization promotes and develops the well-being of local people?
  - b. Do you see a link between promoting well-being and your local authority's community leadership role?
5. What factors facilitate the use of the power of well-being in your authority?
6. What factors inhibit the use of the power of well-being in your authority?
7. What does your local authority do to promote the use of the Power of well-being?
8. In your opinion, do you believe the power of well-being is sufficient to genuinely allow for local innovation and creativity in designing initiatives?
9. What could central government do to encourage local authorities' to promote greater use of the Power of Well-Being?
10. How do you think cuts in public sector expenditure are likely to affect this role?
11. In your opinion, how do you think local efforts to increase well-being can be further developed?
12. In your opinion, why do you think such a small percentage of local councils have used the Power of Well-Being?
13. Do you think that there's anything that I've missed?

## **Appendix 5 – a sample interview transcript**

WH – William Holloway

I – Interviewee

WH: So if I could just ask you a couple of questions just to kind of get a bit of background information, how long have you been working for the organisation?

I: I've been working here, well obviously originally in the County Council I started working for in February 1996. Though I've been, and obviously on the 1<sup>st</sup> April 2009 the county council along with the district council became a unitary authority so effectively I've been working for the council since the 28<sup>th</sup> of February 1996 so effectively fourteen nearly fifteen years.

WH: Right. Is all of that in a in the same role?

I: It has yes slightly differing legal roles but yes all within a legal role yes.

WH: Ok, thank you so if we kind of just drift into the questions now then so what do you kind of what do you understand by the term well-being?

I: Well I take a legal view about it I mean I think but sort of not thinking specifically at the moment about the act and the powers under the 2000 Act, but just talking about well-being in its most generic meaning then I understand that as being anything that can broadly benefit the local authority but I understand it as anything whether it's something economic social being something which benefits the local authority so I see it as having a very broad meaning.

WH: Excellent so within which kind of policy context do you think it's emerged?

I: Well legal powers are obviously the one that I am most aware of so I would feel most comfortable commenting on obviously as that's the one I have the most experience of.

WH: Excellent so how widely would you say that this view is shared across the authority?

I: Well I would say it's interesting, interesting how many people for instance actually know about the existence of the well-being powers. I suspect that people don't and that traditionally local government has had to rely on very specific powers or powers which are ancillary to those specific powers to do anything. Funnily enough I have just come back from running a training course for members and I have been explaining to them that obviously local

government is totally different to real life I mean in real life you can do anything unless the law says you can't, you can drive your car as fast as you like unless the law says no its only 30mph in this zone or 70mph when you're on the motorway. Local government is exactly the opposite local government you can only do anything if you can find a power that says you can. I was trying to explain that to members in the context of why they can't just do anything they want to but they have to put it into a specific power but of course that does buoy local government lawyers as when the well-being power came in in the 2000 act it was quite radical.

I: I don't think it was intended to be radical and potentially it was very radical, but I think that historically people, traditional local government officers struggled with it because it was so broad. And I think even today I think if you said if you walked into a non-legal department and and sort of took a straw poll of officers and said right tell me what you know about the well-being powers and local government act 2000 most of them would look at you gone out, they just wouldn't really understand what you were talking about. If you refer them to a specific power then if you walked into you know you walked into an engineer's officer and said right you know tell me about section 119 of the highways act 1980 then probably they would quote you chapter and verse so it's quite interesting that something so radical and potentially so helpful actually has so little visibility and understanding.

WH: Out of curiosity, in your opinion, do you think that the proposed general power of competency is something that might redress that?

I: I think it would, but that's taking the well-being powers one major step forward and I think that because it has been so trailed politically, being honest about it obviously now we have much more media savvy age and people pick up on things so much more easily that I think both the fact that it's so radical which I think will take it out of the local government context and put it into the wider media context and public interest context and also the fact that there is a lot more that will be written about it and said about it which will be translated electronically so I suspect the combination of those things will mean it will have a far greater impact than the 2000 act did

WH: Whilst staying within the concept of Ultra Vires?

I: Indeed

WH: Can you give me examples of how the organisation promotes and develops the well-being of local people?

I: I think that I would say there are obvious examples in terms of economic regeneration and I would say that that's probably where in generic terms XXXXX have had objective one and now confirmed European funding for many

years since I think about 2002 and that's made a huge difference so a lot of the projects that have come through that European funding have effectively addressed strategic issues in terms of the well-being of the whole county so as a specific example of that you have 'act now' which is a project which effectively meant that every person in XXXXX, well its actually 99% let's not exaggerate, 99% of people in XXXXX have access to broadband. That's a massive project which would never have happened without European funding so that's a huge strategic example if you're looking for specific recent example then perhaps its one area where the council has done something very proactive and had quite a bit of media coverage in terms of dealing with a problem and thereby enhancing the well-being of local communities. Heard of something called 'Town A safe'?

WH: Yes

I: It was quite well covered a specific example of a young person last year who last summer, got drunk celebrating his GCSEs and went for a walk along a cliff top path and fell over the edge because he was drunk and died, and we had two or three examples of where that's happened so that's highlighted a whole issue of people coming down from up country as we say in XXXXX of people coming down and celebrating and parents and so forth coming down and that had all sorts of impact on well-being in that particular community because obviously there was the drunkenness and the loutish behaviour which was obviously something which was greatly concerning but also of concern for all the local hoteliers and guesthouse owners because of course the whole reputation of Town A was being adversely impacted, so the holiday trade the general family holiday trade was being lost because people didn't want to be caught up in stag nights or people celebrating finishing their exams, this project called 'Town A safe' which was brought in which was about coordinating the whole thing about providing advice to young people when they came and also liaising with pubs and clubs trying to get them to act responsibly and enforce alcohol laws so you didn't get people drinking, putting on specific events for young people, specifically for young people putting on buses so they were bussed back from the town back to their hotels and campsites rather than wandering off so a whole range of things like that, that's a very specific recent example where the council have promoted well-being for Town A.

WH: The two projects you mentioned did they did the authority have the existing power or was the power of well-being utilised in that sense?

I: I don't think, that's an interesting point, I don't think it was consciously used but I think but probably the regeneration powers were sufficient to ensure the broadband project came in and I think Town A safe was a range of licensing and general criminal powers that were used but that's an interesting point you raise because actually probably there are certain things on the margin of both projects where someone's asked the question of what powers are you doing

this under so actually probably we could have relied on the well-being powers for certain aspects of it and I think the interesting point of course is that of course because they are popular and socially beneficial projects we weren't faced with anybody who was going to challenge but I suspect there are aspects of those projects where if we had been questioned we would have had the fallback of the well-being powers.

WH: Yes the almost unconscious kind of support that the well-being power offered that's come up before so that's quite an interesting.

I: Well I think yes I think you're right having said what I've said about if you'd gone into a department and asked them, I stand by that comment obviously some of them will look at you as probably a bit gone out however having said that I think there is a knowledge and a consciousness or you might be right a sub consciousness that there is something there that acts as this catch all, giving officers the confidence that they're doing something where they perhaps they don't know or can't identify a very specific power but they know it's the right thing to do, they've got this consciousness that there is this catchall provision there filling in the gaps in the power giving them access to this power when they aren't immediately what the specific power might be.

WH: Excellent thank you so just one last question so obviously given your background you're probably aware of the LAML ruling?

I: Yes

WH: There's been a lot written on the impact the LAML ruling had on the power; do you think it represented a mortal blow to the power?

I: Well, no actually funnily enough I think that my view on LAML is that it's one of those situations where to have something like that does more good than bad. An example where you're glad you aren't the authority involved but actually its nice not to be a London authority but actually the truth of the matter is that has highlighted and brought to the fore the limitations of the well-being power, but probably it will be interesting to see to what extent publicity for LAML has actually pushed forward the general power of competence debate. Actually I don't see at all, There is a lot of publicity around it and still is and actually what they were seeking to do was perfectly sensible and they lost out on a technicality. I summarise my point and what my own view was, actually there's faults in the law and the law needs to be changed in order to enable sensible things like this to happen and whether that's a change specifically to the well-being powers to make them wider or a general power of competence either way that is what should happen interestingly you get some commentators saying well it's the fault of the London authority and they were trying it on, I don't know why it got so much publicity, well that wasn't the case and they were totally



upfront about what they were doing most people said it was highly sensible and of course the challenge of what they were going to do would narrow self interest rather than the public interest challenge. I actually think it's one of those cases where if you aren't the person involved actually to have a case where it goes wrong can bring about greater good and that are what's happened here.

WH: It could bring around greater scope or a wider view of the power?

I: Absolutely, if the power exists doesn't allow you to do this, what the London authorities were trying to do, then it's the power that's defective and needs extending further rather than the authority's concern being for something stupid.

WH: Thank you, so do you see a link between promoting well-being and the community leadership role of the authority?

I: Yeah oh absolutely if I could just give you an example which might be helpful of our own involvement where we did specifically look at it?

WH: Yes.

I: We didn't actually follow it through but I think it illustrates the point. About three or four years ago I got involved in advising on potentially using the well-being powers for an arrangement between ourselves and health, and effectively the petition was that the health the local PCT had revenue difficulties but plenty of capital and we had the opposite we didn't have capital but our revenue situation was fine, so what we discussed with health was effectively using the well-being powers so we used our revenue to prop up their budget revenue budget, so we 'cashflowed' if you like their revenue budget and in return they would pay us back in capital and that would mean we could use more money for our capital projects, and that was the basic premise and I won't bore you with the details we went into, got councils opinion etcetera, but in the end it was felt that we couldn't do it. But the fascinating thing about it was that the minister at the time must have somehow got hold of this or heard about it and about for three or four months while this was ongoing was going to conferences and taking the local paper out of his pocket and saying this thing that XXXXX are doing is exactly what we want this is exactly what should be happening. So although actually sadly we couldn't fulfil the pledge and do it so in a sense you could say, this is 2006 from memory and we were sort of in the vanguard in the big society and XXXXX in our case are now heading, so using legal powers existing or other legal powers to actually join together with other public services to deliver things at less cost to the community overall and more joined up. Working much more closely with health. It was a very simple idea which sadly fell foul of ultimately legal advice but was a classic example of two big public sector well the two biggest public sector employers in XXXXX coming together and saying actually we've both got problems so we'll swap revenue

and capital and solve both problems so we're seen to be working together and both of us being seen as community leaders.

WH: Yes its interesting, would you in your opinion if that project was re-examined now or say in a years time do you think that kind of arrangement would be provided for under a general power of competence?

I: I would sincerely hope so, it wasn't reckless, and as I say ultimately it was a technicality in the drafting that let us down at the end of the day. I am a very pragmatic lawyer and my view is that law should never get in the way of common sense and a sensible outcome. What it should be about is stopping you doing something reckless that obviously originally when the well-being power came in I mean we all know the section 4 restriction which is about you know you can't just use it for purely financial reasons or financial remuneration and fundraising. It has to be for something other than that, obviously partly because of the LAML petition. It's an unnecessary restriction. My view is that the general power of competence if it comes in will be far less rigorous in terms of being prescriptive like that, and will simply have a sort of fallback provision, and if you are doing something you have to make sure it's signed off so that will be expressed in a positive way so of course there will be restrictions so instead of saying you can't do it even if it's for that purpose probably general power of competence will say yeah you can do everything but before you do it it's got to be signed off by you know the section 151 officer or whatever. so my short answer to your question is that something rather adjusting that the general power of competence bill if it came out in such a way that this project that we planned to do was not able to be delivered because it was perfect, it made absolute sense, it wasn't, we weren't speculating they weren't speculating we were filling the gaps within our own capital and revenue budgets and in a way we. It should be in my view a lot more positive and should be instead of having, you can't do that full stop nothing will be ruled out but everything will be subject to audit or financial sign off, and that must be right because I think there are things that on the face of it look like raising revenue and that might be the prime reason for it but my view is that's nothing to stop it, it doesn't mean it's wrong because the aim is to generate income because actually as long as it's not reckless generation of income that's absolutely fine.

WH: Yes.

I: The role of the law should always be to, you know whos given the local authority power, I mean you don't give with one hand and take with the other and I think the general power of competence yes there have to be you don't want local government to be reckless, but ultimately what they should do is give them enough rope to hang themselves and if one or two try something stupid then the appropriate sanctions will be there but don't put something in legislation which judges all local authorities by the worst offender.

WH: Yes definitely, and do you think similar kinds of related legislation e.g. the sustainable communities act 2007, that being signed off by ministers or do you think that is kind of too senior a level for projects to be signed off?

I: Well certainly under general power of competence definitely. I would think that, interestingly with the abolition of the audit commission how diverse the audit role can be, but I would think there would be certain levels where it should be externally looked at but I would have thought it would be local audit level rather than Secretary of State level. Ultimately other than that I think it's the internal responsibilities of your own financial controls.

WH: Yes

I: Local authorities know they've got to balance the books and local authorities know they can't be too reckless and as I say there's no reason to treat things like they've got to be signed off by the Secretary of State and as long as there are clear guidelines as to what local authorities have to do in terms of financial and governance probity then let them get on with it, don't always need it to be signed off by the Secretary of State which will potentially cause delays and intervention. Local authorities always say we're the ones who can best judge what we can do locally and the general power of competence its about releasing power at the local level then don't give it with one hand and then take it back and say ah yes but anything you're going to do over 100,000 quid you have to get it signed off by the minister because that would be nonsense.

WH: What kind of factors do you think both facilitate and inhibit, what kind of factors do you think inhibit and promote the use of the power of well-being?

I: I think partly its ignorance. I think it's partly, until we had this financial crisis ironically, what was the incentive in terms of inhibiting, what was ever the incentive for a local government officer to take a risk? You know the job is difficult enough as it is, why would you want to do something which you couldn't do as part of your day-to-day I mean it might get your name in lights but it ultimately it also might nosedive. From a member point of view unless you could see some significant tangible benefit then why do it. I think it's partly the fear of doing anything radical, partly lack of knowledge, Partly about being too busy in the day job to think about it and its one of those powers that acted when you used it and demonstrated how it can be used then you know once you've done it once you can do it again. Probably in your search you may find out the marked dichotomy between some authorities who've either never heard of it and never used it and those who've used it several times because they've embraced it and seen its benefits and then go out actively to look at ways in which you can do it. Interestingly enough just by way of background, in 2003 the government themselves were concerned about it not being used and they themselves couldn't understand that it hadn't been used because they thought

that it would be taken up hugely. And they sort of looked at it three years on and thought we gave well local authorities were clamouring for greater powers and we've given them greater powers and they haven't done anything with it. And they set up a forum with local authorities to look at ways it had been used and to try and promote- I got invited to a meeting in London because it was what I was talking about, ministerial local knowledge about the finance swap and so I got invited up and they produced a leaflet which was about case studies and I suppose the leaflet links in with your point of your question you ask about what facilitates, I think its actually about for all local authorities about what's happened nationally you know to give people ideas and examples so you know promote them, and that's effectively what happened so they produced a leaflet which I played a small part in drafting, and that was then in December of 2003 they sent that round.. It was a Local Government Association document it was called 'powering up: making the most of the power of well-being'. If you want that as part of your research I'm more than happy to do a copy and send it up for you.

WH: That would be great, thank you.

I: just give you a bit of context, I always remember the example I think it was Brighton or one of the Sussex counties or Sussex authorities; they manufactured and sold their own sun tan lotion under it.

WH: Ah Hastings, yes.

I: Hastings, yes thank you. Yes well that's the sort of thing people can identify with I mean not all local authorities are on the coast and could market sun tan lotion but that's a classic example where you obviously had some officer who has thought outside the box, you know this is fantastic for well-being this is a health enhancing power and of course it raises money as well so it's ideal.

WH: Yes it was certainly innovative.

I: it was, not that I ever saw the business model so I don't know how long it worked but I just thought it was...

WH: It was certainly different, the previous uses of the power that I, the most publicised ones that I'm aware of is kind of Essex with the post offices or Kent with the bus services and TV stations; so Hastings and their project is certainly a marked difference. Right so I mean we've kind of touched upon things that inhibit as well so what does your local authority do really to promote the use of the power because I know you mentioned at the start that perhaps some officers aren't as knowledgeable about the power as others might be?

I: I think I'd go back to my point that I made with Town A safe and Act now, that I think probably whether it's the right thing or not probably not rather than say

writing around to all directors of services and saying oh by the way do you know there's a power of well-being and how to use it, this is what it is, I think what we've got is a culture whereby in the current financial crisis thinking out the box and coming up with anything any ideas that you think might generate income for the authority on the basis we'll worry about how we do it whether its legally right or not, we'll worry about that afterwards but you know in the current time of huge financial stringencies anything you can come up with which might deliver some kind of financial or economic benefit for the area hopefully things like the sun tan lotion can also generate income for the authority as well.

WH: Yes, and do you think it was a specific problem which lies at the root of the power that it didn't have the ability to raise finance attached to it?

I: absolutely absolutely, I think there's a fundamental flaw in the act with the belief that in some way if its prime motive was to raise money then it was wrong. I think that was all about the other cases you'll have looked at, the watt cases and so on, all of that still left the government fundamentally nervous that if you allowed local authority government to have a power that was primarily to engage in all sort of reckless business ventures, then I think unfortunately you know that might have been the prudent way to do things but I think it just put people off. And probably I would say that's another reason as to what inhibited it, not necessarily in our authority but what inhibited it nationally was people saying, well you know if we don't I mean ideally you get a sun tan lotion idea which is picking up on a social and environmental well-being issue, and oh by the way we get money out of it but you know I think, the government should have as I say issued a general power of competence saying you know local government we're trusting you. To me it's always felt like one of those things that's neither one thing nor the other, a compromise I suppose I would call it, you know you're saying to your local authority 'you know brave new world we want you to go out and do all these things, ah but, and um, it's a bit like meeting your daughters new boyfriend, you know oh yes hes absolutely lovely darling, yes he's lovely but if I were you I wouldn't do'. You know it doesn't work, you've either got to be wholly enthusiastic or you say not. Yeah by the way you can have him but we put these restrictions on it. It doesn't send the right message.

WH: Would I, I'm correct in assuming that the 2000 Act and specifically the well-being power, did that make obsolete certain sections of the 1973 local government act, specifically sections 137 which allowed a discretionary spending limit?

I: Yes, yes it did.

WH: So it actually, it took away the ability to offer discretionary finance.

I: Yes quite

WH: Okay thank you, so that kind of emphasises the point really I suppose, so I mean we've almost in a sense already talked about it but in your opinion do you believe the power of well-being is sufficient to genuinely allow for local innovation and creativity in designing initiatives?

I: I mean, yes it does, I don't think anything within the general, in the well-being power stifles innovation or creativity as the examples in the leaflet you'll have read about indicate. You know people thought long and hard about it and there was plenty you could do with innovation, one of the ones which wasn't particularly innovatory but we thought about, was using the well-being power, we were going to do a joint bid to, in fact we did do a joint bid to manage the trunk roads in XXXXX with a private sector partner and use the well-being power to justify that. And we couldn't have used, if it was, obviously the nature of the contract was going to be joint liability and we were advised we could use the well-being power to take on a potential liabilities of the private company through a contract so I think that the examples are when you sit down and think about it there's lots of things you could do about it I don't, it's one of those conundrums that I've just talked about in terms of apart from the restrictions apart from that you do scratch your head and wonder why it didn't happen other than the fact that maybe it needed to be launched, it needed to be examples given, and given far more publicity and promotion across the pace. And sort of three years afterwards we produced the leaflet went out to other local authorities which in itself was probably too late and probably wasn't enough. But certainly I'm sure you'll find examples with your contacts and through your research you'll find authorities that were very creative about it, and didn't find, yes of course certain things that LAML has proved is that restrictions with the well-being power prevented them delivering what they wanted to deliver but there was still within what you could do a huge amount of innovation and creativity that authorities could have brought in.

WH: So what do you think central government could do to encourage local authorities to promote greater use of the power of well-being?

I: well, what in fact, if the general power of competence does come forward in the autumn, between now and the end of November, what, how does that impact on your research if you don't mind me asking a question?

WH: not at all, no believe me it's a question I'm having to ask myself. There is, I'm having to shall we say, address a significant portion of my research looking at the power of general competence as well but I can't really, well, there's either two scenarios, the first is that either I look at the power of general competence as well, but I can't do anything to do with that until the draft bill is published which I hear is going to be the week beginning 15<sup>th</sup> November but equally so I've just heard that the localism bill is going to be so innovative and radical that it actually needs more time to be worked through CLG. So either I look at both

the powers together or I look at specifically the power of well-being and my thesis and my research is just basically a snapshot of ten years of local government innovation, or thirteen years actually.

I: yes, well its everyone's worst nightmare isn't it how everything can change during the course of writing of a thesis or a project. But that's something fundamentally affecting yours as the power of general competence it is unfortunate, unfortunate timing, but I suppose my answer to that would be of course, that's why I asked the question to you I don't know I don't think you can separate them out because clearly if the power of general competence comes in then at the end of the day of course there's lots of radical stuff which fails, it does fail and bring down something everybody agrees with but I don't think there's anyone who is opposed to the general power of competence. I think that should come through, but of course you could say there's a lot of provisional bills that don't get the necessary support but again looking at the ideal scenario if the general power of competence comes in I think then that effectively that would be the death knell for the power of well-being, if it doesn't, then I think in a sense you would hope the government would use the fact that having the general powers of competence not being enacted then the government the fallback position would be well I'm sorry local government that's all very sad but, and then you almost re-launch it, and maybe of course the 2000 act if the localism bill fails then the lets give that act then itself can be amended and talk about financial restrictions but in the meantime I think the only thing you can do is almost what they tried to do in 2003 but bigger and better.

WH: Yeah, well one thing I am seeking to do from the thesis is if the general power of competence, or power of general competence as it might be, not sure about the legislative differences in terms, but what lessons that have been learned from the power of well-being can inform the use of the power of general competence?

I: I think that's sensible.

WH: How do you think cuts in public sector expenditure are likely to affect the role?

I: My view is that I think it could enhance it, because I think what you are seeing across the public sector at the moment is that people are being radical and are thinking all sorts of things and sort of the, specific example is we are, certainly one part of the A30 into the county is not being dualled, and effectively its ongoing, the highways agency obviously look after the A30 and our chief exec said why should we be cowering down and batten down the hatches and we haven't got much money, and let's not do very much, it's actually no lets be bold, and say ok lets use this time as an opportunity, there might not be as

much government central funding to do certain projects but that's why we've been looking for opportunities with the private sector to do major projects together so why can't we go into partnership with a civil engineering contractor and look to take over the A30 and do the maintenance and therefore look potentially at ways of doing the dual carriageways on the A30? So that's just one example and of course if you're going to do something like that, something as radical as that then of course the first thing would be well what are our powers, and I'm absolutely certain we'll look at the powers of well-being. So I think you'll find, I may be proved wrong, but rather than say oh we've got no money we can't do anything, and we haven't got the funds and we can't afford to do anything radical, I think we should go a different way and say we need to do more in partnership with the private and voluntary sector and other public sector agencies like health and the police, I think will make people and possibly have greater reliance on the power.

WH: yeah, well that's I mean that's quite interesting the dualling of the A30, I would suspect that nobody would really question it, I mean that's the ultimate question with rulings, I mean why-

I: why challenge it? Yeah of course it's always, that's an issue that we lawyers have with those who are responsible for doing things, I've had to have a conversation with a chief exec on numerous occasions about who will challenge it but of course that's difficult for me as monitoring officer because it doesn't matter whether someone will challenge or not if I don't think its lawful we shouldn't be doing it, and then we get into the question of whether its lawful or unlawful and then if it's arguable there's a risk it may be challenged but I think people like myself, and quite rightly, are being pushed by the party majors to look for the most wide application of powers in order to do things that as you say, nobody in reality is ever going to challenge because everybody wants it. And that's the interesting thing about the power of well-being and using it and one of the things that's, backtracking a little bit, but one of the reasons why early on the power of well-being was not used as much as it should have been is that local authorities, it was sold as and local authorities interpreted it as the power of last resort, and one of the things that this group I was part of in 2003 looked at was actually of course, power of well-being should be the first resort. The confusion was of course as you know you couldn't use the power of well-being if something else, if there was a power, or a prohibition against it, and most people took the view that, sorry, a bit of law, but to be specific, if there was a specific power which was similar to what you wanted to do but didn't allow you to do what you wanted to do then you couldn't use the well-being power for it. And I think of course one of the messages the govt wanted to get across in 2003 was of course actually that's the completely wrong way to look at it, what you should be doing is saying actually, unless there is an express prohibition in that other piece of legislation then look to the 2000 act as being your primary



power to do something, don't look for something else and say oh we'll fill in the gaps with the well-being powers, be bold and say no the well-being powers are there to do it, let's do it. And unless there is a specific piece of legislation which looks like it carries an express prohibition then just ignore it or use it as an ancillary subsidiary power.

WH: Excellent, that's really quite interesting, obviously I've heard that the perception that the power of well-being should be perceived as the power of first resort. So I mean, how do you think efforts could be further increased, to increase well-being could be further developed rather?

I: I suppose that goes back to what I've said previously, which is I actually think you know you take the approaches of today and, almost local authorities are backing up the message of the chief executive which is to say you've been asked to look at radical ways at which the authority might raise money or cut costs or whatever, and you know you may be thinking that because you've got good local authority officers and you've grown up knowing you have to have an express specific power to do anything, the thing I started this conversation with, but use the 2000 act then as your specific power and be aware of how wide it is for you. Or if you don't know the details, don't be constrained in looking at the radical, by oh gosh have we got the legal power for it, don't worry about that, we've got this wide power in the background, think of the radical, we've got the well-being power, we'll advise you on it, come to us and we'll tell you if you can use it or not. So, and that's the important thing and I suppose the second thing is always again, what I've said previously- the best way of advertising how effective something is, to use it once and get it right.

WH: Yes, definitely.

I: it's something that works, and I think unfortunately in the example I gave you before where we joined with a private sector company looking after the trunk road maintenance, that one we did use it but the bid was unsuccessful, and so that went by the board, and obviously my finance one with health didn't work out, that went by the board, so of course that's the difficulty, you try something and you get something radical and you look at the well-being powers and its oh, not quite, I'm sorry, nearly there but not there, but also then that has a risk, people think it's the answer to everything but it isn't. Every authority needs to find something, needs to find a project where it works and then that advertises it to other officers out there, other members out there, looking at other potential projects.

WH: Thank you very much, it's been great, very useful, is there anything you think I might have missed that you think might be useful?

I: No I think it's a good comprehensive list of questions.